

**ORDINANCE NO. 2015-35**

ORDINANCE GRANTING A LICENSE TO PROVIDE, INSTALL, REPAIR, REPLACE AND MAINTAIN BUS PASSENGER BENCHES AT CITY-APPROVED SITES WITHIN CITY LIMITS TO MARTIN OUTDOOR MEDIA, INC., A FLORIDA CORPORATION, FOR AN INITIAL TERM OF FIVE YEARS, COMMENCING ON JUNE 1, 2015, AND ENDING ON MAY 31, 2020, WITH THE OPTION TO RENEW FOR TWO ADDITIONAL FIVE YEAR TERMS UPON THE MUTUAL CONSENT OF THE PARTIES; AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO EXECUTE THE LICENSE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on November 23, 2004, the City of Hialeah awarded a five-year license to Martin Outdoor Media, Inc. to provide, install and maintain bus passenger benches at City-approved sites within City limits, with an option to renew for two successive five-year terms; and

**WHEREAS**, on January 4, 2005, the City of Hialeah entered into a License Agreement with Martin Outdoor Media, Inc. for five years with two successive five-year renewal options; and

**WHEREAS**, the commencement of the license was delayed 30 days until February 4, 2005 to allow Martin Outdoor Media, Inc. to remove the existing bus benches that were abandoned in poor condition by the prior licensee; and

**WHEREAS**, on November 11, 2009, the City of Hialeah exercised its first option to renew the agreement awarded to Contractor for an additional five years beginning on February 4, 2009 and expiring on February 4, 2015; and

**WHEREAS**, while considering the approval of the second and final five-year extension under the agreement dated January 4, 2005, the parties negotiated new terms set forth in the Agreement attached as Exhibit 1; and

**WHEREAS**, at all times during the term in effect of the license, the bus bench company has fully complied with the terms of the agreement and presently, maintains 389 bus benches throughout the City, including a number of benches with public service announcements as requested by the City; and

**WHEREAS**, the parties agree the Agreement attached as Exhibit 1 shall govern their rights and obligations as of the date of the parties' execution and this Agreement shall supersede all prior agreements, specifically the agreement awarded on November 23, 2004 and renewed on November 11, 2009; and

**WHEREAS**, the parties agree that the terms of this Agreement shall not impair the City's rights or obligations under its contract with Clear Channel Outdoor, Inc., for the installation and maintenance of up to 75 bus shelters awarded to Clear Channel Outdoor, Inc. pursuant to Hialeah, Fla. Resolution 2002-15 (March 21, 2002) and Hialeah, Fla. Ordinance 2002-27 (April 26, 2002) currently in effect; and

**WHEREAS**, the City finds it in its best interest pursuant to contract with Martin Outdoor Media, Inc., to provide for the orderly installation and maintenance of bus benches at designated bus stops on its rights of way for the comfort and convenience of the public;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** The City of Hialeah, Florida hereby grants a license to provide, install, replace, repair and maintain bus passenger benches at City-approved sites within City limits to Martin Outdoor Media, Inc., a Florida corporation, for an initial term of five years, commencing on June 1, 2015 and ending on May 31, 2020, with the option to renew for two additional five year terms upon the mutual consent of the parties.

**Section 3:** The Mayor and the City Clerk, as attesting witness, are hereby authorized to sign the Agreement on behalf of the City, a copy of which is attached hereto and made a part hereof as Exhibit "1".

**Section 4: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 6: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 7: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

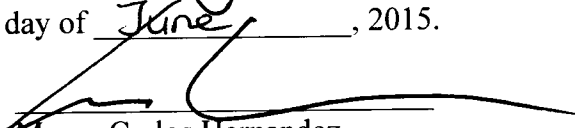
PASSED and ADOPTED this 23 day of June, 2015.

  
Isis Garcia Martinez  
Council President

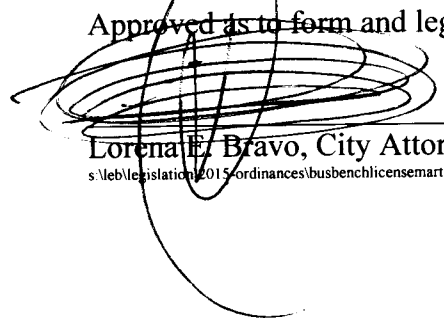
Attest:

Approved on this 30 day of June, 2015.

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
Lorena E. Bravo, City Attorney

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THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

**AGREEMENT BETWEEN THE CITY OF HIALEAH  
AND MARTIN OUTDOOR MEDIA, INC.**

This Agreement ("Agreement") entered into this \_\_\_\_ day of May 2015, by and between the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Martin Outdoor Media, Inc., a Florida corporation, ("Contractor,") having a place of business at 150 N.W. 70 Avenue, Suite 3, Plantation, Florida 33317

**RECITALS**

**WHEREAS**, pursuant to a duly advertised Request for Proposal No.: 2005-001, the Contractor submitted a proposal to provide, install and maintain bus passenger benches at city-approved sites within public rights-of-way; and

**WHEREAS**, on November 23, 2004, the City of Hialeah awarded a five-year agreement to Martin Outdoor Media, Inc. with an option to renew for two successive five-year terms subject to the mutual agreement of the parties; and

**WHEREAS**, on November 11, 2009, the City of Hialeah exercised its first option to renew the agreement awarded to Contractor for an additional five years beginning on February 4, 2009 and expiring on February 4, 2015; and

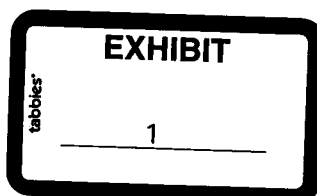
**WHEREAS**, while considering the approval of the second and final five-year extension under the agreement dated January 4, 2005, the parties negotiated new terms set forth in this Agreement;

**WHEREAS**, the Contractor has erected and is maintaining 389 bus passenger benches at the locations identified in Exhibit A to this Agreement;

**WHEREAS**, the parties agree this Agreement shall govern their rights and obligations as of the date of the parties' execution and this Agreement shall supersede all prior agreements, specifically the agreement awarded on November 23, 2004 and renewed on November 11, 2009;

**WHEREAS**, the City agrees to enter into this Agreement with the Contractor and the Contractor agrees to perform services under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations herein contained and intending to be legally bound thereby, and subject to the terms and conditions hereinafter stated, the City and the Contractor enter into this License Agreement and agree as follows:



## 1. INCORPORATION OF RECITALS

The parties represent that the recitals set forth above are true and correct. The recitals incorporated by reference in their entirety and are deemed a part of this Agreement.

## 2. TERM AND OPTIONS TO RENEW

2.1. The term of this Agreement shall begin on June 1, 2015 and end on May 31, 2020 unless otherwise terminated or renewed as set forth in this Agreement.

2.2. Provided that Contractor has not defaulted in the performance of its obligations pursuant to this Agreement, that Contractor has the capability in all respects to fully perform under this Agreement, that Contractor has the integrity and reliability that will ensure good faith performance, and that the parties mutually agree, this Agreement may be renewed for two additional five-year terms. The Contractor shall notify the City in writing within 120 days of the expiration of the initial five-year term or within 120 days of the expiration of the first renewal period, if applicable, of its intention to renew for a successive five-year term.

## 3. SCOPE OF SERVICES

3.1. Subject to all the terms and conditions contained in this Agreement, and compliance with all applicable federal, state, county and local law, the City hereby grants Contractor permission to erect, install, replace, maintain and repair bus passenger benches with advertising during the term of this Agreement at the locations identified on Exhibit A to this Agreement. The total number of existing bus passenger benches is 389 and no additional benches shall be installed in the City's right-of-way unless otherwise approved in writing in advance of installation.

3.2. At Contractor's sole cost and expense, the Contractor shall upgrade and replace 125 of the existing bus passenger benches, at the locations of the City's choice and in the City's sole discretion, with new benches of the design and style approved by the City as illustrated in Exhibit B to this Agreement. The upgrade and replacement of these benches shall take place during the first five year term of this Agreement at the uniform rate of 25 benches replaced each year.

3.3. Any change in location, removal, replacement, upgrade or addition of benches must be approved by the City in advance of any such action by the Contractor. The Contractor shall cooperate with the City to install and maintain benches along designated stops on official bus routes or any other stop which the City determines, in its sole discretion, serves the convenience and comfort of the public.

3.4. The Contractor shall install, replace, maintain and repair all benches in compliance with all applicable federal, state and local laws, including but not limited to, applicable safety, accessibility and building standards and regulations. The Contractor shall not create any unsafe conditions on the rights of way as a result of any installation,

3.9 The Contractor shall be responsible for maintaining and cleaning the portion of the public right-of-way within ten feet from each side of each bus passenger bench, at its sole cost and expense. The Contractor shall not allow this area to be overgrown with grass or weeds or littered with garbage or debris. Nothing in this paragraph 3.9 shall be construed as requiring the Contractor to maintain or clean the roadway surface free from litter, garbage or debris.

3.10 If a bus bench or the surrounding public right-of-way is not maintained in the manner required by this Agreement, as determined by the City, the City shall notify the Contractor in writing. The Contractor shall correct the condition complained of by the City within twenty-four (24) hours after receipt of the City's notification. If the Contractor fails to take the necessary corrective action after notification from the City, the City may take all action it deems necessary to correct the condition complained of and the Contractor shall be responsible for the City's costs and expenses incurred, including, but not limited to, labor, overtime, materials, department overhead, equipment charges and any other reasonable fees or costs incurred by the City for this purpose.

3.11 The Contractor shall create, maintain, and make available to the City all of records reasonably necessary with enough specificity and detail to demonstrate that the Contractor has performed its obligations in compliance with the requirements of this Agreement, including but not limited to: (i) a log of all complaints or requests for maintenance, repair or service to the bus benches or the surrounding right-of-way pursuant to this Agreement identifying the person making the complaint or request, the date and time of the complaint or request, the nature of the complaint or request, the action or actions taken by the Contractor to address the complaint or request and the date and time of all action taken by the Contractor until the complaint or request was satisfactorily addressed; and (ii) a log of all inspections, maintenance and repairs to the bus benches and to the surrounding right-of-way, including information describing the action or actions taken by the Contractor, the date and time of each action, the reason or reasons the action or actions were deemed necessary by the Contractor, and any observations about the conditions of the benches or surrounding public right-of-way that required the Contractor's action.

3.12 The City shall have the right to request removal or relocation of any bus bench, which in its opinion obstructs pedestrian or vehicular traffic, creates a risk of danger to the health, safety or welfare of the public, or is otherwise unsafe, unsanitary or a nuisance, if the bus stop served by the bus bench has been eliminated or the bench no longer serves to meet the comfort or convenience of the public. Elimination of benches pursuant to this paragraph 3.12, shall not entitle the Contractor to setoff, deduct, or otherwise reduce the compensation owed to the City pursuant to Section 4 of this Agreement.

3.13 The Contractor shall have the right to sell advertising on all bus passenger benches during the term of this Agreement, and any renewal thereof. All revenue derived from the sale of advertisement by the Contractor shall belong exclusively to the

Contractor except as provided for in Section 4 of this Agreement. The City shall not be liable to Contractor for any monies or compensation for the use of the benches at any location within the City. The sole source of compensation to be derived by Contractor is that which may be gained from the advertisement sold and displayed on the benches by Contractor. The Contractor shall indemnify and hold the City harmless from any claim made against the Contractor or the City by any person, corporation or entity related to Contractor's sale of advertisement on the benches, including but not limited to any claim of infringement of intellectual property rights. The City shall have the right to require the Contractor to remove any advertising display or content that the City, in its sole discretion, determines to be offensive, obscene or lascivious, that distracts or disrupts traffic. The Contractor agrees to provide, at no cost to the City, the entire advertising space on no less than 30 benches each year the Agreement is in effect to display messages of public interest, as determined by the City, at the locations of the City's choice. With the exception of the first year of this initial term in this Agreement, the number of benches and locations shall be selected by the City and provided to the Contractor with ninety (90) days advance notice prior to the beginning of each year. The number of benches for the purpose of dedicated advertising space to the City shall be 14 during the first year of this first term of the Agreement (i.e. 2015). The Contractor shall install all City sponsored advertising on the benches at no cost to the City. The number of benches used by the City pursuant to this paragraph 3.13 shall not be included in the yearly calculation of the annual minimum guaranteed fee according to section 4 of this Agreement. The Contractor shall have no right to setoff, deduct, or otherwise reduce the compensation owed to the City or make any claim on any revenue resulting from the City's use of the advertising space pursuant to this paragraph 3.13.

#### 4. LICENSING FEE AND COMPENSATION

4.1 The Contractor shall pay an annual guaranteed minimum fee or a percentage of yearly gross advertising revenue, whichever amount is greater, for each year the Agreement is in effect, including any renewals thereof, as follows:

<u>Year</u>	<u>Annual Guaranteed Minimum Fee</u>	<u>Percentage of Yearly Gross Revenue</u>
1	\$56,250.00	12%
2	\$58,500.00	12%
3	\$60,750.00	12%
4	\$63,000.00	12%
5	\$65,250.00	12%
6	\$67,500.00	15%
7	\$69,750.00	15%
8	\$72,000.00	15%
9	\$74,250.00	15%
10	\$76,500.00	15%
11	\$78,750.00	20%
12	\$81,000.00	20%
13	\$81,000.00	20%

14	\$81,000.00	20%
15	\$81,000.00	20%

4.1.1 The annual guaranteed minimum fee indicated in paragraph 4.1 above was calculated based on the negotiated monthly fee for each bench, up to 375 benches, for each year the Agreement is in effect, as indicated in the table below. Any additional benches installed by Contractor on the City's right-of-way, as approved in advance by the City, in excess of 375, shall increase the annual guaranteed minimum fee indicated in paragraph 4.1 above by an amount equal to the number of benches in excess of 375 times the negotiated monthly fee for each such additional bench in excess of 375, for each year, as indicated in the table below. To illustrate the calculation required by this paragraph 4.1.1, assume in Year 2 the City elects not to use any benches to display its public interest advertisements as allowed by section 3.13 above, the number of benches in excess of 375 would be 14. The annual guaranteed minimum fee indicated in paragraph 4.1 above for Year 2 (\$58,500.00) would increase by \$2,268.00  $([14 \text{ excess benches} \times \$13.50] \times 12)$  for a total guaranteed minimum fee of \$60,768.00 in Year 2.

<u>Year</u>	<u>Monthly Fee for each bench up to 375</u>	<u>Monthly Fee for each additional bench in excess of 375</u>
1	\$12.50	\$13.00
2	\$13.00	\$13.50
3	\$13.50	\$14.00
4	\$14.00	\$14.50
5	\$14.50	\$15.00
6	\$15.00	\$15.50
7	\$15.50	\$16.00
8	\$16.00	\$16.50
9	\$16.50	\$17.00
10	\$17.00	\$17.50
11	\$17.50	\$18.00
12	\$18.00	\$18.50
13	\$18.00	\$18.50
14	\$18.00	\$18.50
15	\$18.00	\$18.50

4.2 The total annual guaranteed minimum fee indicated in paragraph 4.1 above, as that amount may be increased to account for benches in excess of 375 at set forth in paragraph 4.1.1 above, shall be paid in advance in equal installments on a quarterly basis throughout each year the Agreement is in effect. Within thirty (30) days after the end of each year of the Agreement, the Contractor shall calculate the total gross revenue generated for the preceding year for all bus benches in the City and apply the yearly gross revenue percentage for that corresponding year as set forth in paragraph 4.1. If the percentage of total yearly gross revenue exceeds the annual guaranteed minimum fee paid during the year, the Contractor shall pay the excess between these two amounts to the City as an additional payment. This additional payment shall be made within forty-five



(45) days after the end of each year of the Agreement or within fifteen (15) days from the calculation of the percentage of total yearly gross revenue amount, whichever date is earlier. For example, assuming the total number of benches does not exceed 375, for Year 1 of the Agreement, the Contractor shall pay \$14,062.50 (one quarter of \$56,250.00) on June 1, 2015, September 1, 2015, December 1, 2015 and March 1, 2016. No later than June 30, 2016, Contractor shall calculate the total gross revenue generated for all bus benches during the period of June 1, 2015 to May 31, 2016 and multiply the total gross revenue by 10%. If this amount exceeds \$56,250.00, the Contractor shall pay the excess as additional payment to the City. For purposes of illustrating the calculations required to determine compensation according to this section 4, assuming the total number of benches does not exceed 375 and the total yearly gross revenue for Year 7 (June 1, 2022 to May 31, 2023) is \$500,000.00, the Contractor would pay \$5,250.00 ( $[\$500,000.00 \times 15\% = \$75,000.00] - \$69,750.00$ ) as additional payment to the City no later than July 15, 2023. Assuming the total number of benches does not exceed 375 and the total yearly gross revenue remains the same for Year 10 (June 1, 2025 to May 31, 2026), the Contractor would not be required to make an additional payment to the City because the annual guaranteed minimum fee for Year 10 (\$76,500.00) would not exceed fifteen percent (15%) of total yearly gross revenue for Year 10 (\$75,000.00). For purposes of illustrating the calculations required to determine compensation if the number of benches exceeds 375, assume in Year 7 the City decides not to use any dedicated advertising space on any bench leaving the existing 389 benches for the Contractor's use and assume the total yearly gross revenue for Year 7 is \$500,000.00, the Contractor would pay a total annual guaranteed minimum fee of \$72,438.00 (\$69,750.00 plus \$2,688.00 for 14 excess benches) in equal quarterly installments of \$18,109.50 and \$2,562.00 as an additional payment to the City as the percentage of total yearly gross revenue.

## 5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City.

## 6. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by certified mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

CITY

City Clerk  
City of Hialeah  
501 Palm Avenue, 3rd Floor

MARTIN OUTDOOR MEDIA, INC.

Scott Martin  
Business Development  
Martin Outdoor Media, Inc.

Hialeah, Florida 33010-0040  
Telephone: (305) 883-5824  
Facsimile: (305) 883-5814

150 N.W. 70 Avenue, Ste. 3  
Plantation, Florida 33317  
Telephone: (305) 655-0822  
Facsimile: (305) 655-9949  
E-mail: \_\_\_\_\_

With a Copy to:

City Attorney  
City of Hialeah  
501 Palm Avenue, 4<sup>th</sup> Floor  
Hialeah, Florida 33010-0040  
Telephone: (305) 883-5854  
Facsimile: (305) 883-5896

#### 7. NONDELEGABLE

The duties and obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any person or firm. Any sale, transfer, assignment or other disposition of any duties and obligations undertaken hereunder, exclusive of installation and removal, shall be approved by the Hialeah City Council and the Mayor, by resolution, prior to continuation of any duties and obligations provided under this Agreement. The City shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment of the Contractor. Any assignment made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement.

#### 8. AWARD OF AGREEMENT

The Contractor warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

#### 9. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

#### 10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

## 11. INDEMNIFICATION

11.1 The Contractor, for itself, and its officers, directors, employees, subcontractors, agents, representatives, successors, assigns, and any other individual or entity who may attempt to sue or be sued on its behalf, hereby unequivocally waives, releases, holds harmless, indemnifies, covenants not to sue, agrees to defend, and forever discharges the City of Hialeah, its officers, elected or appointed, directors, employees, agents, attorneys, contractors and all other persons, entities, organizations and corporations affiliated therewith (all of whom constitute the "Released Parties") from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and from any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind (collectively "Claims"), arising out of, resulting from, relating to, is incidental to or is in any way connected to the Contractor's performance of this Agreement, including by way of illustration and not limitation, (i) any negligent installation, replacement, removal, maintenance or repair of any bus bench governed by this Agreement; or (ii) any negligent inspection, failure to warn, or failure to make safe any dangerous condition on any bench or surrounding public right-of-way, as required by this Agreement; or (iii) any failure of Contractor to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, whether or not such Claims, as collectively defined in this section 11, were caused by, arose or resulted from the negligent acts or omissions of the Released Parties. This indemnification shall survive the termination of this Agreement.

## 12. CONFLICT OF INTEREST

The Contractor is aware of the conflict of interest laws of the City (Hialeah Code ch. 26, Art. I and II), the County (Code of Miami-Dade County, Florida § 2-11.1), and the State of Florida (Chapter 112, Part III, Florida Statutes) and agrees that it shall fully comply in all respects with the requirements of said laws.

## 13. INDEPENDENT CONTRACTOR

The Contractor, its employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights or benefits generally afforded classified or unclassified employees of the City. The Contractor, its employees, agents or representatives, shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

## 14. INSURANCE

14.1 The Contractor shall provide, pay for and maintain, no later than ten (10) days after this Agreement is presented to the Contractor for signature, such insurance as

required by this Section 14, including Workers' Compensation Insurance, Public Liability and Property Damage Insurance, Comprehensive General Liability Insurance, Contractual Liability Insurance, Automobile Liability Insurance and Owner's Protective Liability Insurance, which shall remain in force at all times during the term of this Agreement and any renewal thereof. The Contractor shall furnish, prior to execution of this Agreement by the City, Certificates of Insurance, which indicate that insurance coverage has been obtained for all required insurance policies. The Contractor agrees to secure and pay the premiums for the following policies of insurance with the minimum insurance limits set forth below. Each such policy will be in the name of the Contractor with the City named as an additional insured and shall cover all of the Contractor's operations covered in this Agreement.

14.2 Such policies shall be issued by United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. The company must be rated no less than "A" as to management, and not less than Class "X" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company. Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. The Contractor shall specifically protect the City by naming the City as an additional insured under the Public Liability Insurance Policy, the Contractual Liability Insurance Policy, the Automobile Liability Insurance Policy and the Owner's Protective Liability Insurance Policy.

14.3 The Contractor shall provide coverage for the risks and in the amounts indicated in this paragraph 14.3. All policies shall provide a notice of cancellation or restriction: The policies must be endorsed to provide City with at least 30 days notice of cancellation and/or restriction.

14.3.1 Worker's Compensation Insurance as required by Chapter 440, Florida Statutes, as amended from time to time, and all applicable federal laws to apply for all of Contractor's employees.

14.3.2 Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

14.3.3 Contractual Liability Insurance covering all liability arising out of the terms of this Agreement and all other insurance coverage identified in the Insurance Checklist attached as Exhibit C.

14.3.4 Business Automobile Liability Insurance with \$1,000,000 single limit for bodily injury and property damage combined for each occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (1) Owned vehicles, if applicable; and (2) Hired and Non-Owned vehicles.

14.3.5 Owner's Protective Liability Insurance issued in the name of the City as sole insured in amounts not less than one million dollars (\$1,000,000.00). This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Contractor.

14.3.6 The Contractor shall provide the City with a Certificate of Insurance or a copy of all insurance policies required in this article. The City reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that City shall be given at least 30 days' notice prior to expiration or cancellation of the policy.

14.3.7 Failure to maintain the insurance required above shall be just grounds for termination of this Agreement.

14.4 The Contractor agrees that the insurance coverage required shall include those classifications as are listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor.

#### 15. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND AND CASH BOND

15.1 A performance bond and labor and material payment bond is required of the Contractor for the installation of new bus benches as provided by paragraph 3.2. The Contractor shall duly execute and deliver to the City, each year for the entire initial five (5) year term of this Agreement, a performance bond and a labor and material payment bond in the amount of ten thousand dollars (\$15,000.00). The performance bond and labor and material payment bond shall be delivered to the City Clerk within 15 days after this Agreement is furnished to the Contractor for signature. If the Contractor fails to deliver the performance bond and labor and materials payment bond, the City shall declare the Contractor in default. The performance bond and labor and materials payment bond shall be written through surety insurers authorized to do business in the State of Florida as surety.

15.2 A cash bond in the amount of five percent (5%) of the total of the annual guaranteed minimum fee for the entire initial five (5) year term of this Agreement and any renewal thereof, to secure performance under the terms of this Agreement shall be furnished by the Contractor to the City simultaneously with the submission of this Agreement by the Contractor. The cash bond will be deposited with the Finance Director of the City. The City keeps the interest on the cash bond that accrues during the initial five- year term of this Agreement and any renewal thereof. If the Contractor and the City

agree to renew for one or both of the successive five-year terms, the City holds the cash bond and interest thereon during the second five- year term and third five-year term. At the end of the Contract term, whether it is five, ten or fifteen years, the City will return to the Contractor the cash bond but keep all interest accruing thereon only if the City has no claim for damages against the Contractor resulting from Contractor's failure to perform which may be asserted against the cash bond. An attorney trust account check, money order or cashier's check is acceptable for placing the cash bond.

#### 16. NONDISCRIMINATION

The Contractor agrees that it shall not discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance of this Agreement. The Contractor shall comply will all federal, state and local laws applicable to Contractor's services, specifically including those covering Equal Opportunity Employment and the Americans with Disabilities Act.

#### 17. RECORD RETENTION, INSPECTION AND AUDIT

17.1 The Contractor shall maintain its records in an organized, up-to-date manner, in accordance with generally accepted management principles and practices. The City shall have access to the Contractor's books, logs, records and documents for inspection, audit, review and copying in Miami-Dade County, during normal business hours, within five (5) days after the City requests such records. The Contractor shall provide appropriate facilities for conducting such inspection, audit or review.

17.2 The Florida Public Records Law may be applicable to the Contractor's records or documents pertaining to this Agreement. Contractor agrees to comply with all applicable provisions of the Florida Public Records Law including records retention schedules. Notwithstanding, the Contractor shall maintain and allow access to the books, records, logs, data, documents, reports and information relating to this Agreement for at least five (5) years after the termination of this Agreement.

#### 18. DEFAULT

18.1 Insolvency/Bankruptcy. Subject to paragraph 18.5 herein, Contractor shall be in default if during the terms of this Agreement, if:

- a. Contractor files a voluntary petition in bankruptcy; or
- b. Contractor is adjudicated insolvent; or
- c. Contractor obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); or
- d. Contractor files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation,

dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; or

e. Contractor seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Contractor, or any of Contractor's property and/or License and/or any and all of the revenues, issues, earnings, profits or income thereof; or

f. Contractor makes an assignment for the benefit of creditors; or

g. Contractor fails to pay Contractor's debts generally as they become due; or

h. Contractor conceals, removes or permits to be concealed or removed, any part of Contractor's property, with intent to hinder, delay or defraud Contractor's creditors or any of them, or makes or suffers a transfer of any of Contractor's property which may constitute an illegal preference or be considered an insider transaction, as defined in the Bankruptcy Code, or which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of Contractor's property through legal proceedings which is not vacated within 30 days from the date thereof; or

j. A petition is filed in a court of competent jurisdiction against Contractor seeking any determination of bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which petition is not vacated or dismissed within an aggregate of 90 days (whether or not consecutive) from the date of the filing thereof; or

i. Any trustee, receiver, custodian or liquidator of Contractor, or of any of the property of Contractor and/or of all or any party of this Agreement and/or of any or all of the revenues, issues, earnings, profits or income therefrom, is appointed without the prior written consent of the City, which appointment shall remain unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of the appointment; then upon the occurrence of any such events an Uncured Event of Default shall have occurred hereunder and the City may exercise any and all remedies available to it.

18.2 Contractor fails to pay any amount owed to the City under this Agreement within 7 days after prompt written notice thereof from the City.

18.3 Contractor fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of Contractor to be performed within 30 days after prompt written notice thereof from the City, unless such performance shall reasonably require a longer period, in which case Contractor shall not be deemed in default if Contractor

commences the required performance promptly and thereafter pursues and diligently completes such action.

18.4 The City may terminate this Agreement for cause and cause shall include those events of default as provided in paragraph A above.

18.5 Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within 30 days, or 7 days if the default concerns Contractor's failure to pay, after receipt of such notice. However, where such default cannot reasonably be cured within such 30-day period, the time for curing such default shall be extended for such period of time as may be necessary under the circumstances if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence. There shall be no extension to the 7-day cure period for Contractor's failure to pay.

## 19. ENTIRE AGREEMENT

This Agreement and its attachments and exhibits constitute the entire agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

## 20. AMENDMENT

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

## 21. MISCELLANEOUS

21.1 Captions, title and paragraph headings are for convenient reference and are not a part of this Agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

21.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

21.3 Should any provisions, paragraph, sentence, work or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.



21.4 Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

21.5 Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

21.6 Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

21.7 Contractor represents that the Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right and authority to enter and perform its obligations under this Agreement, and Contractor is duly authorized to execute and deliver this Agreement without further approvals or authorizations.

THIS SPACE LEFT INTENTIONALLY BLANK. IT IS FOLLOWED BY THE  
SIGNATURE PAGE.

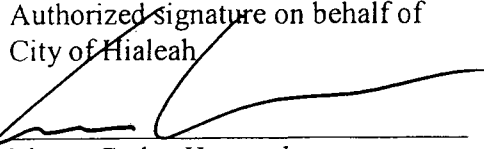
IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by the respective duly authorized officials, on the day and year first above written.

City of Hialeah, Florida  
501 Palm Avenue  
Hialeah, Florida 33010-0040

Attest:

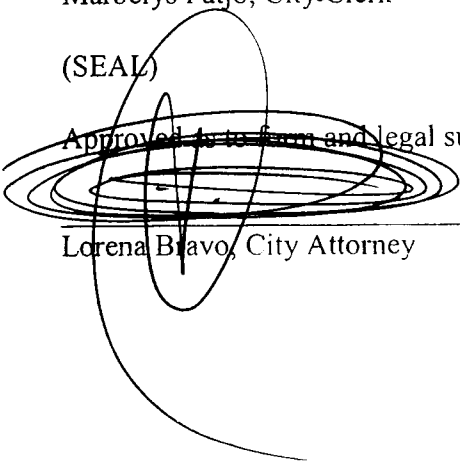
Authorized signature on behalf of  
City of Hialeah

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

(SEAL)

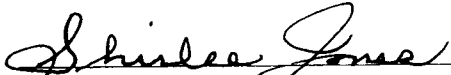
Approved by the firm and legal sufficiency:

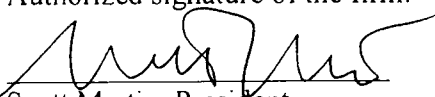
  
Lorena Bravo, City Attorney

Martin Outdoor Media, Inc., a  
Florida corporation  
150 N.W. 70 Avenue, Suite 3  
Plantation, Florida 33317

Attest:

Authorized signature of the firm:

  
Corporate Secretary  
Typed/printed name: Shirlee Jones

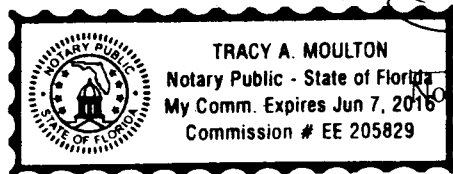
  
Scott Martin, President

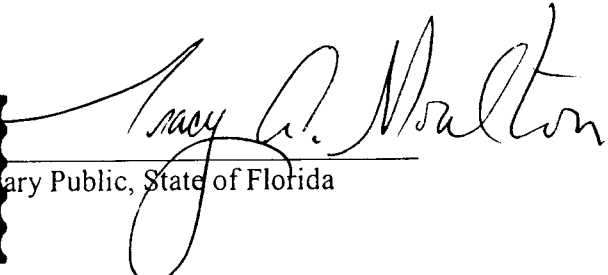
State of Florida  
County of Miami-Dade

Sworn to and subscribed before me on this 20<sup>TH</sup> day of May, 2014, by  
Scott Martin, on behalf of Martin Outdoor Media, Inc., in his/her capacity President.

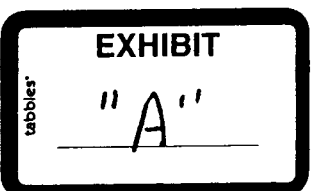
☒ Personally known or  
☐ Produced valid photo identification

Commission:



  
Notary Public, State of Florida

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 HI-383 W 8th Ave 70 ft N/O W 68th St ES  
 HI-379 W 8th Ave 60 ft N/O 77th St ES  
 HI-599 W 8th Ave 50 ft S/O W 27th St WS  
 HI-372 W 8th Ave 50 ft S/O 84th St WS  
 HI-380 W 8th Ave 40 ft N/O W 40th Pl WS  
 HI-584 W 8th Ave 40 ft N/O W 29th St ES  
 HI-601 W 8th Ave 25 ft N/O W 48th St ES  
 HI-390 W 8th Ave 20 ft S/O W 48th St ES  
 HI-598 W 8th Ave 15 ft S/O W 23rd St ES  
 HI-381 W 8th Ave 15 ft N/O W 81st St ES  
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 HI-386 W 84th St 20 ft W/O W 8th Ave SS  
 HI-516B W 80th St @ W 34TH CT SS  
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HI-169 SE Le Jeune Rd 30 ft N/O SE Hialeah Dr ES  
HI-163 SE Le Jeune Rd 25 ft S/O SE 8th St ES  
HI-168A SE Le Jeune Rd 15 ft S/O SE 11th Pl ES  
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HI-573 SE 4th Ave 20 ft S/O SE 5th St ES  
HI-066B SE 4th Ave 10 ft S/O E Hialeah Dr ES  
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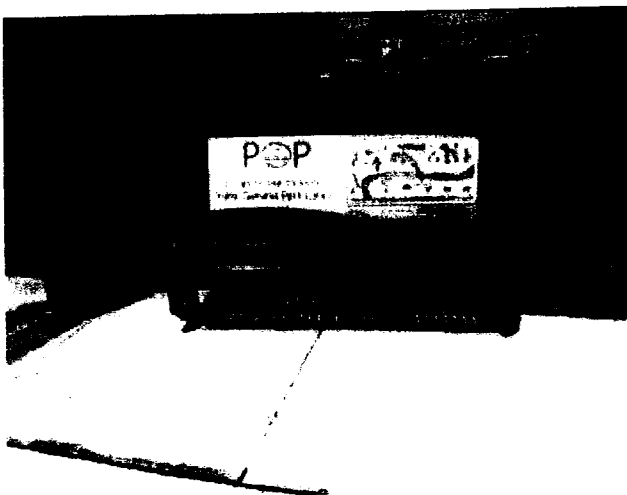
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HI-155 Palm Ave 10 ft S/O E 43rd St ES  
HI-147 Palm Ave 10 ft S/O E 29th St ES  
HI-153 Palm Ave 10 ft N/O W 49th St WS  
HI-156 Palm Ave 10 ft N/O W 43rd St WS  
HI-139 Palm Ave 10 ft N/O W 15th St WS  
HI-137 Palm Ave 10 ft N/O E 22nd St ES  
HI-555 Hialeah Dr 80 ft W/O E 6th Ave SS  
HI-558 Hialeah Dr 25 ft W/O W 5th Ave NS  
HI-556 Hialeah Dr 200 ft E/O E 10th Ct SS  
HI-090 Hialeah Dr 20 ft W/O E 3rd Ave NS  
HI-093 Hialeah Dr 20 ft W/O E 10th Ave SS  
HI-092A Hialeah Dr 20 ft E/O E 5th Ave SS  
HI-089 Hialeah Dr 20 ft E/O E 2nd Ave SS  
HI-091 Hialeah Dr 15 ft W/O E Le Jeune Rd NS  
HI-086B Hialeah Dr 15 ft W/O E 2nd Ave NS  
HI-085 Hialeah Dr 15 ft E/O E Le Jeune Rd SS  
HI-088 Hialeah Dr 15 ft E/O E 4th Ave NS  
HI-557 Hialeah Dr 100 ft W/O E 6th Ave NS  
HI-087 Hialeah Dr 10 ft E/O E 1st Ave NS  
HI-125 E Le Jeune Rd 80 ft S/O E 49th St WS  
HI-127 E Le Jeune Rd 50 ft S/O E 25th St WS  
HI-117 E Le Jeune Rd 50 ft N/O E 57th St WS  
HI-096 E Le Jeune Rd 5 ft S/O E 55th St ES  
HI-115 E Le Jeune Rd 5 ft S/O E 37th St ES

HI-113 E Le Jeune Rd 5 ft S/O E 26th St ES  
HI-119 E Le Jeune Rd 5 ft S/O E 23rd St WS  
HI-102 E Le Jeune Rd 5 ft S/O E 16th St WS  
HI-118 E Le Jeune Rd 5 ft N/O E 47th St WS  
HI-129 E Le Jeune Rd 40 ft S/O E 39th St WS  
HI-101 E Le Jeune Rd 40 ft S/O E 25th St ES  
HI-104 E Le Jeune Rd 25 ft S/O E 49th St ES  
HI-131 E Le Jeune Rd 25 ft N/O E 55th St WS  
HI-126 E Le Jeune Rd 20 ft S/O Hialeah Dr WS  
HI-134 E Le Jeune Rd 20 ft S/O E 35th St ES  
HI-114 E Le Jeune Rd 20 ft S/O E 29th St WS  
HI-098 E Le Jeune Rd 20 ft N/O E 63rd St ES  
HI-603 E Le Jeune Rd 20 ft N/O E 60th St WS  
HI-132 E Le Jeune Rd 20 ft N/O E 53rd St WS  
HI-130 E Le Jeune Rd 20 ft N/O E 33rd St ES  
HI-591 E Le Jeune Rd 150 ft S/O E 37th Street WS  
HI-106A E Le Jeune Rd 15 ft S/O E 9th St WS  
HI-128 E Le Jeune Rd 15 ft S/O E 31st St WS  
HI-122 E Le Jeune Rd 15 ft S/O E 19th St ES  
HI-120 E Le Jeune Rd 15 ft N/O E 21st St ES  
HI-099 E Le Jeune Rd 10 ft S/O E 60th St ES  
HI-592 E Le Jeune Rd 10 ft S/O E 53rd St ES  
HI-100 E Le Jeune Rd 10 ft S/O E 11th Pl WS  
HI-103 E Le Jeune Rd 10 ft N/O E 23rd St ES  
HI-105 E Le Jeune Rd 10 ft N/O E 21st St WS  
HI-116 E Le Jeune Rd 10 ft N/O E 19th St WS  
HI-562 E Le Jeune 80 ft N/O E 5th St ES  
HI-560 E Le Jeune 5 ft S/O E 43rd St WS  
HI-553 E Le Jeune 5 ft N/O E 47th St ES  
HI-552 E Le Jeune 40 ft N/O E 56th St ES  
HI-515 E Le Jeune 40 ft N/O E 45th St ES  
HI-476 E Le Jeune 35 ft N/O E 3rd Pl ES  
HI-559 E Le Jeune 30 ft S/O E 4th St WS  
HI-563 E Le Jeune 20 ft N/O E 29th St ES

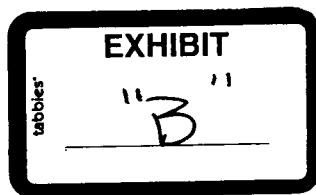
HI-564 E Le Jeune 15 ft N/O E 39th St ES  
HI-535 E Le Jeune 100 ft S/O E 41st St WS  
HI-536 E Le Jeune 100 ft N/O E 41st St ES  
HI-080 E 9th St 50 ft E/O E 12th Ave SS  
HI-077 E 9th St 5 ft E/O E 5 th Ave SS  
HI-078 E 9th St 40 ft E/O E 10th Ave SS  
HI-083 E 9th St 15 ft W/O E 4th Ave SS  
HI-082 E 9th St 15 ft E/O E 7th Ave SS  
HI-590 E 9th St 125 ft W/O RR Tracks NS  
HI-081 E 9th St 100 ft W/O E 4th Ave NS  
HI-084 E 9th St 10 ft E/O E 8th Ave SS  
HI-478 E 9th St 10 ft E/O E 7th Ave NS  
HI-508 E 9th St 10 ft E/O E 12th Ave NS  
HI-498 E 9th St 10 ft E/O E 10th Ave NS  
HI-497 E 9th Ave 100 ft E/O E 6th Ave SS  
HI-071 E 65th St 80 ft W/O E 7th Ave NS  
HI-073 E 65th St 40 ft E/O E 5th Ave NS  
HI-069A E 65th St 15 ft W/O E 2nd Ave SS  
HI-589 E 5th St 50 ft W/O E 1st Ave NS  
HI-511 E 4th Ave 80 ft S/O E 54th St ES  
HI-042 E 4th Ave 80 ft S/O E 49th St WS  
HI-037 E 4th Ave 60 ft S/O E 6th St WS  
HI-067 E 4th Ave 60 ft N/O Hialeah Dr ES  
HI-395A E 4th Ave 50 ft N/O E 25th St ES  
HI-028 E 4th Ave 5 ft S/O E 53rd St WS  
HI-546 E 4th Ave 5 ft S/O E 37th St WS  
HI-041 E 4th Ave 5 ft S/O E 37th St ES  
HI-545 E 4th Ave 5 ft S/O E 13th St WS  
HI-022 E 4th Ave 40 ft S/O E 4th St WS  
HI-548 E 4th Ave 40 ft N/O E 35th St ES  
HI-565 E 4th Ave 35 ft N/O E 47th St ES  
HI-031 E 4th Ave 30 ft S/O E 9th St ES  
HI-495 E 4th Ave 30 ft S/O E 29th St ES  
HI-039 E 4th Ave 30 ft N/O E 38th St WS

HI-397 E 4th Ave 25 ft N/O E 56th St WS  
HI-532 E 4th Ave 20 ft S/O E. 17th St WS  
HI-061A E 4th Ave 20 ft N/O Okeechobee Rd WS  
HI-046 E 4th Ave 20 ft N/O E 33rd St ES  
HI-547 E 4th Ave 15 ft S/O E 45th St ES  
HI-029 E 4th Ave 15 ft S/O E 19th St WS  
HI-027 E 4th Ave 15 ft S/O E 11th St WS  
HI-032A E 4th Ave 15 ft N/O E 9th St WS  
HI-533 E 4th Ave 100 ft S/O E 41st St WS  
HI-530 E 4th Ave 100 ft N/O E 14th St ES  
HI-044 E 4th Ave 10 ft S/O E 43rd St WS  
HI-531 E 4th Ave 10 ft S/O E 15th St WS  
HI-607 E 4th Ave 10 ft N/O E 7th St WS  
HI-063 E 4th Ave 10 ft N/O E 64th St ES  
HI-023 E 4th Ave 10 ft N/O E 4th St ES  
HI-030 E 4th Ave 10 ft N/O E 35th St WS  
HI-026 E 4th Ave 10 ft N/O E 13th St ES  
HI-610 E 4th Ave @ E 62nd St WS  
HI-047A E 49th St 40 ft E/O Palm Ave SS  
HI-054A E 49th St 40 ft E/O Palm Ave NS  
HI-053 E 49th St 30 ft W/O E Le Jeune NS  
HI-059 E 49th St 30 ft E/O E Le Jeune SS  
HI-058 E 49th St 20 ft W/O E 4th Ave SS  
HI-394 E 49th St 20 ft E/O E 6th Ave SS  
HI-051 E 49th St 20 ft E/O E 5th Ave SS  
HI-048 E 49th St 20 ft E/O E 4th Ave NS  
HI-050A E 49th St 15 ft W/O E 10th Ave NS  
HI-060 E 49th St 10 ft W/O E 5th Ave NS  
HI-052 E 49th St 10 ft W/O E 2nd Ave NS  
HI-049A E 49th St 10 ft W/O E 10th Ave SS  
HI-577 E 49th St 10 ft E/O E 6th Ave NS  
HI-055 E 49th St 10 ft E/O E 2nd Ave SS  
HI-587 E 3rd St 70 ft E/O 1st Ave NS  
HI-588 E 3rd St 35 ft E/O 1st Ave SS

HI-018	E 32nd St 15 ft W/O E 4th Ave SS
HI-020	E 32nd St 15 ft W/O E 2nd Ave SS
HI-585B	E 2nd Ave 25 ft N/O Hialeah Dr ES
HI-586	E 2nd Ave 10 ft N/O Hialeah Dr. WS
HI-012	E 25th St 70 ft E/O E Le Jeune Rd SS
HI-551	E 25th St 50 ft W/O E 10th Ave NS
HI-549	E 25th St 35 ft W/O E 7th Ave SS
HI-009	E 25th St 20 ft W/O E 7th Ave NS
HI-013A	E 25th St 20 ft W/O E 6th Ave SS
HI-014A	E 25th St 15 ft E/O E 5th Ave NS
HI-010	E 25th St 120 ft E/O E 11th Ave NS
HI-015	E 25th St 10 ft W/O 6th Ave NS
HI-008	E 25th St 10 ft E/O E 9th Ave NS
HI-507	E 21st St 160 ft W/O E 4th Ave NS
HI-002	E 1st Ave 50 ft S/O E 9th St ES
HI-003	E 1st Ave 10 ft S/O E 7th St ES



- \* Galvanized steel construction for increased durability
- \* Ventilated bench seating until cooler on hot sunny days
- \* Special grafitti rubberized paint
- \* No removable parts which eliminates issues with broken concrete legs, broken legs, broken seats, or missing ad display
- \* Design and color customized to match overall streetscape vision of the city and neighborhoods





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**AGREEMENT BETWEEN THE CITY OF HIALEAH  
AND MARTIN OUTDOOR MEDIA, INC.**

This Agreement ("Agreement") entered into this \_\_\_\_ day of May 2015, by and between the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Martin Outdoor Media, Inc., a Florida corporation, ("Contractor,") having a place of business at 150 N.W. 70 Avenue, Suite 3, Plantation, Florida 33317

**RECITALS**

**WHEREAS**, pursuant to a duly advertised Request for Proposal No.: 2005-001, the Contractor submitted a proposal to provide, install and maintain bus passenger benches at city-approved sites within public rights-of-way; and

**WHEREAS**, on November 23, 2004, the City of Hialeah awarded a five-year agreement to Martin Outdoor Media, Inc. with an option to renew for two successive five-year terms subject to the mutual agreement of the parties; and

**WHEREAS**, on November 11, 2009, the City of Hialeah exercised its first option to renew the agreement awarded to Contractor for an additional five years beginning on February 4, 2009 and expiring on February 4, 2015; and

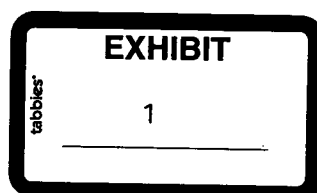
**WHEREAS**, while considering the approval of the second and final five-year extension under the agreement dated January 4, 2005, the parties negotiated new terms set forth in this Agreement;

**WHEREAS**, the Contractor has erected and is maintaining 389 bus passenger benches at the locations identified in Exhibit A to this Agreement;

**WHEREAS**, the parties agree this Agreement shall govern their rights and obligations as of the date of the parties' execution and this Agreement shall supersede all prior agreements, specifically the agreement awarded on November 23, 2004 and renewed on November 11, 2009;

**WHEREAS**, the City agrees to enter into this Agreement with the Contractor and the Contractor agrees to perform services under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations herein contained and intending to be legally bound thereby, and subject to the terms and conditions hereinafter stated, the City and the Contractor enter into this License Agreement and agree as follows:



## 1. INCORPORATION OF RECITALS

The parties represent that the recitals set forth above are true and correct. The recitals are incorporated by reference in their entirety and are deemed a part of this Agreement.

## 2. TERM AND OPTIONS TO RENEW

2.1. The term of this Agreement shall begin on June 1, 2015 and end on May 31, 2020 unless otherwise terminated or renewed as set forth in this Agreement.

2.2. Provided that Contractor has not defaulted in the performance of its obligations pursuant to this Agreement, that Contractor has the capability in all respects to fully perform under this Agreement, that Contractor has the integrity and reliability that will ensure good faith performance, and that the parties mutually agree, this Agreement may be renewed for two additional five-year terms. The Contractor shall notify the City in writing within 120 days of the expiration of the initial five-year term or within 120 days of the expiration of the first renewal period, if applicable, of its intention to renew for a successive five-year term.

## 3. SCOPE OF SERVICES

3.1. Subject to all the terms and conditions contained in this Agreement, and compliance with all applicable federal, state, county and local law, the City hereby grants Contractor permission to erect, install, replace, maintain and repair bus passenger benches with advertising during the term of this Agreement at the locations identified on Exhibit A to this Agreement. The total number of existing bus passenger benches is 389 and no additional benches shall be installed in the City's right-of-way unless otherwise approved in writing in advance of installation.

3.2. At Contractor's sole cost and expense, the Contractor shall upgrade and replace 125 of the existing bus passenger benches, at the locations of the City's choice and in the City's sole discretion, with new benches of the design and style approved by the City as illustrated in Exhibit B to this Agreement. The upgrade and replacement of these benches shall take place during the first five year term of this Agreement at the uniform rate of 25 benches replaced each year.

3.3. Any change in location, removal, replacement, upgrade or addition of benches must be approved by the City in advance of any such action by the Contractor. The Contractor shall cooperate with the City to install and maintain benches along designated stops on official bus routes or any other stop which the City determines, in its sole discretion, serves the convenience and comfort of the public.

3.4. The Contractor shall install, replace, maintain and repair all benches in compliance with all applicable federal, state and local laws, including but not limited to, applicable safety, accessibility and building standards and regulations. The Contractor shall not create any unsafe conditions on the rights of way as a result of any installation,

replacement, maintenance, repair or any other work or action required under this Agreement. The Contractor shall be responsible for keeping and maintaining all affected areas reasonably clean, safe and in good workmanlike manner, as appropriate for the stage of completion of any installation, replacement, maintenance or repair of benches. The Contractor shall be responsible for repairing any damage caused to the public right of way as a result of the installation, replacement, maintenance or repair of any bench. The Contractor shall inspect benches regularly to ensure that all benches are kept and maintained in good order and repair, and in a clean, safe and sanitary condition and appearance at all times.

3.5 The Contractor shall pay for all costs and expenses associated with the installation, inspection, maintenance, repair, removal, or replacement of all bus benches and the surrounding public rights-of-way as required by this Agreement, including but not limited to, labor, equipment and materials, license and permit fees, and any regulatory or government assessments, fees, charges, or taxes. The Contractor warrants that all work, materials, services and equipment that may be reasonably inferred from this Agreement as being required to produce the intended result will be supplied by the Contractor at its own cost, whether or not specifically identified and required in this Agreement. The Contractor warrants and agrees that all work, materials, services and equipment necessitated by the inspections of City agencies or other regulatory agencies, in order to bring Contractor's work into compliance with this Agreement and all applicable laws, shall be the responsibility of the Contractor and shall be provided at no additional cost to the City.

3.6 All the bus passenger benches governed by this Agreement are the property of the Contractor and shall be removed by the Contractor within thirty (30) days after termination of this Agreement including any renewal thereof. The Contractor shall be responsible for repairing and restoring the public rights-of-way, including sidewalks, walkways, and curbs, to a safe and working condition upon removal of the bus passenger benches, at its sole cost and expense. If the Contractor fails to remove any bench, or restore or repair any portion of the public right-of-way, as required by this Agreement, the City shall have the right to remove all benches, and restore or repair the public right-of-way, as it deems necessary, and the Contractor shall be responsible for and shall reimburse the City for all costs and expenses incurred by the City for its failure to remove benches, or restore or repair the public right-of-way upon termination of the Agreement.

3.7 Nothing contained in this Agreement shall be construed as creating an ownership interest or exclusive easement in the Contractor on any portion of the public right-of-way or other public property on which the bus passenger benches are located.

3.8 The Contractor will provide, at its sole cost and expense, a toll free phone number clearly indicated on each bench to receive public complaints about or requests for maintenance or repair services to the bus passenger benches. The Contractor shall perform all reasonably necessary action required to correct and make safe the conditions reported through the toll free phone number within twenty-four (24) hours after notice. The number shall be operational seven (7) days a week, twenty-four (24) hours a day.

3.9 The Contractor shall be responsible for maintaining and cleaning the portion of the public right-of-way within ten feet from each side of each bus passenger bench, at its sole cost and expense. The Contractor shall not allow this area to be overgrown with grass or weeds or littered with garbage or debris. Nothing in this paragraph 3.9 shall be construed as requiring the Contractor to maintain or clean the roadway surface free from litter, garbage or debris.

3.10 If a bus bench or the surrounding public right-of-way is not maintained in the manner required by this Agreement, as determined by the City, the City shall notify the Contractor in writing. The Contractor shall correct the condition complained of by the City within twenty-four (24) hours after receipt of the City's notification. If the Contractor fails to take the necessary corrective action after notification from the City, the City may take all action it deems necessary to correct the condition complained of and the Contractor shall be responsible for the City's costs and expenses incurred, including, but not limited to, labor, overtime, materials, department overhead, equipment charges and any other reasonable fees or costs incurred by the City for this purpose.

3.11 The Contractor shall create, maintain, and make available to the City all of records reasonably necessary with enough specificity and detail to demonstrate that the Contractor has performed its obligations in compliance with the requirements of this Agreement, including but not limited to: (i) a log of all complaints or requests for maintenance, repair or service to the bus benches or the surrounding right-of-way pursuant to this Agreement identifying the person making the complaint or request, the date and time of the complaint or request, the nature of the complaint or request, the action or actions taken by the Contractor to address the complaint or request and the date and time of all action taken by the Contractor until the complaint or request was satisfactorily addressed; and (ii) a log of all inspections, maintenance and repairs to the bus benches and to the surrounding right-of-way, including information describing the action or actions taken by the Contractor, the date and time of each action, the reason or reasons the action or actions were deemed necessary by the Contractor, and any observations about the conditions of the benches or surrounding public right-of-way that required the Contractor's action.

3.12 The City shall have the right to request removal or relocation of any bus bench, which in its opinion obstructs pedestrian or vehicular traffic, creates a risk of danger to the health, safety or welfare of the public, or is otherwise unsafe, unsanitary or a nuisance, if the bus stop served by the bus bench has been eliminated or the bench no longer serves to meet the comfort of convenience of the public. Elimination of benches pursuant to this paragraph 3.12, shall not entitle the Contractor to setoff, deduct, or otherwise reduce the compensation owed to the City pursuant to Section 4 of this Agreement.

3.13 The Contractor shall have the right to sell advertising on all bus passenger benches during the term of this Agreement, and any renewal thereof. All revenue derived from the sale of advertisement by the Contractor shall belong exclusively to the

Contractor except as provided for in Section 4 of this Agreement. The City shall not be liable to Contractor for any monies or compensation for the use of the benches at any location within the City. The sole source of compensation to be derived by Contractor is that which may be gained from the advertisement sold and displayed on the benches by Contractor. The Contractor shall indemnify and hold the City harmless from any claim made against the Contractor or the City by any person, corporation or entity related to Contractor's sale of advertisement on the benches, including but not limited to any claim of infringement of intellectual property rights. The City shall have the right to require the Contractor to remove any advertising display or content that the City, in its sole discretion, determines to be offensive, obscene or lascivious, that distracts or disrupts traffic. The Contractor agrees to provide, at no cost to the City, the entire advertising space on no less than 30 benches each year the Agreement is in effect to display messages of public interest, as determined by the City, at the locations of the City's choice. With the exception of the first year of this initial term in this Agreement, the number of benches and locations shall be selected by the City and provided to the Contractor with ninety (90) days advance notice prior to the beginning of each year. The number of benches for the purpose of dedicated advertising space to the City shall be 14 during the first year of this first term of the Agreement (i.e. 2015). The Contractor shall install all City sponsored advertising on the benches at no cost to the City. The number of benches used by the City pursuant to this paragraph 3.13 shall not be included in the yearly calculation of the annual minimum guaranteed fee according to section 4 of this Agreement. The Contractor shall have no right to setoff, deduct, or otherwise reduce the compensation owed to the City or make any claim on any revenue resulting from the City's use of the advertising space pursuant to this paragraph 3.13.

3.14 Contractor understands and agrees that the City has a separate agreement currently in effect with Clear Channel Outdoor, Inc., for the installation and maintenance of bus shelters on the City's rights-of-way pursuant to Hialeah, Fla. Resolution No. 2002-15 (March 31, 2002) and Hialeah, Fla. Ordinance 2002-27 (April 26, 2002) entered into between the parties on May 13, 2002. Contractor acknowledges receipt of a copy of the current agreement. Contractor agrees that the Parties' rights and obligations as provided for in this Agreement shall not impair the rights and obligations of the City or Clear Channel Outdoor, Inc. pursuant to their agreement. The City reserves the exclusive right of identifying locations it deems suitable, in its own discretion, for the installation and maintenance of a bus bench pursuant to the terms of this Agreement. Likewise, the City reserves the exclusive right, in its sole discretion, of eliminating existing bus benches under this Agreement.

#### 4. LICENSING FEE AND COMPENSATION

4.1 The Contractor shall pay an annual guaranteed minimum fee or a percentage of yearly gross advertising revenue, whichever amount is greater, for each year the Agreement is in effect, including any renewals thereof, as follows:

<u>Year</u>	<u>Annual Guaranteed Minimum Fee</u>	<u>Percentage of Yearly Gross Revenue</u>
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1	\$56,250.00	12%
2	\$58,500.00	12%
3	\$60,750.00	12%
4	\$63,000.00	12%
5	\$65,250.00	12%
6	\$67,500.00	15%
7	\$69,750.00	15%
8	\$72,000.00	15%
9	\$74,250.00	15%
10	\$76,500.00	15%
11	\$78,750.00	20%
12	\$81,000.00	20%
13	\$81,000.00	20%
14	\$81,000.00	20%
15	\$81,000.00	20%

4.1.1 The annual guaranteed minimum fee indicated in paragraph 4.1 above was calculated based on the negotiated monthly fee for each bench, up to 375 benches, for each year the Agreement is in effect, as indicated in the table below. Any additional benches installed by Contractor on the City's right-of-way, as approved in advance by the City, in excess of 375, shall increase the annual guaranteed minimum fee indicated in paragraph 4.1 above by an amount equal to the number of benches in excess of 375 times the negotiated monthly fee for each such additional bench in excess of 375, for each year, as indicated in the table below. To illustrate the calculation required by this paragraph 4.1.1, assume in Year 2 the City elects not to use any benches to display its public interest advertisements as allowed by section 3.13 above, the number of benches in excess of 375 would be 14. The annual guaranteed minimum fee indicated in paragraph 4.1 above for Year 2 (\$58,500.00) would increase by \$2,268.00 ([14 excess benches X \$13.50] X 12) for a total guaranteed minimum fee of \$60,768.00 in Year 2.

<u>Year</u>	<u>Monthly Fee for each bench up to 375</u>	<u>Monthly Fee for each additional bench in excess of 375</u>
1	\$12.50	\$13.00
2	\$13.00	\$13.50
3	\$13.50	\$14.00
4	\$14.00	\$14.50
5	\$14.50	\$15.00
6	\$15.00	\$15.50
7	\$15.50	\$16.00
8	\$16.00	\$16.50
9	\$16.50	\$17.00
10	\$17.00	\$17.50
11	\$17.50	\$18.00
12	\$18.00	\$18.50
13	\$18.00	\$18.50

14	\$18.00	\$18.50
15	\$18.00	\$18.50

4.2 The total annual guaranteed minimum fee indicated in paragraph 4.1 above, as that amount may be increased to account for benches in excess of 375 at set forth in paragraph 4.1.1 above, shall be paid in advance in equal installments on a quarterly basis throughout each year the Agreement is in effect. Within thirty (30) days after the end of each year of the Agreement, the Contractor shall calculate the total gross revenue generated for the preceding year for all bus benches in the City and apply the yearly gross revenue percentage for that corresponding year as set forth in paragraph 4.1. If the percentage of total yearly gross revenue exceeds the annual guaranteed minimum fee paid during the year, the Contractor shall pay the excess between these two amounts to the City as an additional payment. This additional payment shall be made within forty-five (45) days after the end of each year of the Agreement or within fifteen (15) days from the calculation of the percentage of total yearly gross revenue amount, whichever date is earlier. For example, assuming the total number of benches does not exceed 375, for Year 1 of the Agreement, the Contractor shall pay \$14,062.50 (one quarter of \$56,250.00) on June 1, 2015, September 1, 2015, December 1, 2015 and March 1, 2016. No later than June 30, 2016, Contractor shall calculate the total gross revenue generated for all bus benches during the period of June 1, 2015 to May 31, 2016 and multiply the total gross revenue by 10%. If this amount exceeds \$56,250.00, the Contractor shall pay the excess as additional payment to the City. For purposes of illustrating the calculations required to determine compensation according to this section 4, assuming the total number of benches does not exceed 375 and the total yearly gross revenue for Year 7 (June 1, 2022 to May 31, 2023) is \$500,000.00, the Contractor would pay \$5,250.00 ( $[\$500,000.00 \times 15\% = \$75,000.00] - \$69,750.00$ ) as additional payment to the City no later than July 15, 2023. Assuming the total number of benches does not exceed 375 and the total yearly gross revenue remains the same for Year 10 (June 1, 2025 to May 31, 2026), the Contractor would not be required to make an additional payment to the City because the annual guaranteed minimum fee for Year 10 (\$76,500.00) would not exceed fifteen percent (15%) of total yearly gross revenue for Year 10 (\$75,000.00). For purposes of illustrating the calculations required to determine compensation if the number of benches exceeds 375, assume in Year 7 the City decides not to use any dedicated advertising space on any bench leaving the existing 389 benches for the Contractor's use and assume the total yearly gross revenue for Year 7 is \$500,000.00, the Contractor would pay a total annual guaranteed minimum fee of \$72,438.00 (\$69,750.00 plus \$2,688.00 for 14 excess benches) in equal quarterly installments of \$18,109.50 and \$2,562.00 as an additional payment to the City as the percentage of total yearly gross revenue.

## 5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City.

## 6. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by certified mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

### CITY

City Clerk  
City of Hialeah  
501 Palm Avenue, 3rd Floor  
Hialeah, Florida 33010-0040  
Telephone: (305) 883-5824  
Facsimile: (305) 883-5814

### MARTIN OUTDOOR MEDIA, INC.

Scott Martin  
Business Development  
Martin Outdoor Media, Inc.  
150 N.W. 70 Avenue, Ste. 3  
Plantation, Florida 33317  
Telephone: (954)-583-2066  
Facsimile: (954)-583-2068  
E-mail: \_\_\_\_\_

With a Copy to:

City Attorney  
City of Hialeah  
501 Palm Avenue, 4<sup>th</sup> Floor  
Hialeah, Florida 33010-0040  
Telephone: (305) 883-5854  
Facsimile: (305) 883-5896

## 7. NONDELEGABLE

The duties and obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any person or firm. Any sale, transfer, assignment or other disposition of any duties and obligations undertaken hereunder, exclusive of installation and removal, shall be approved by the Hialeah City Council and the Mayor, by resolution, prior to continuation of any duties and obligations provided under this Agreement. The City shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment of the Contractor. Any assignment made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement.

## 8. AWARD OF AGREEMENT

The Contractor warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage,



brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

## 9. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

## 10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

## 11. INDEMNIFICATION

11.1 The Contractor, for itself, and its officers, directors, employees, subcontractors, agents, representatives, successors, assigns, and any other individual or entity who may attempt to sue or be sued on its behalf, hereby unequivocally waives, releases, holds harmless, indemnifies, covenants not to sue, agrees to defend, and forever discharges the City of Hialeah, its officers, elected or appointed, directors, employees, agents, attorneys, contractors and all other persons, entities, organizations and corporations affiliated therewith (all of whom constitute the "Released Parties") from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and from any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind (collectively "Claims"), arising out of, resulting from, relating to, is incidental to or is in any way connected to the Contractor's performance of this Agreement, including by way of illustration and not limitation, (i) any negligent installation, replacement, removal, maintenance or repair of any bus bench governed by this Agreement; or (ii) any negligent inspection, failure to warn, or failure to make safe any dangerous condition on any bench or surrounding public right-of-way, as required by this Agreement; or (iii) any failure of Contractor to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, whether or not such Claims, as collectively defined in this section 11, were caused by, arose or resulted from the negligent acts or omissions of the Released Parties. This indemnification shall survive the termination of this Agreement.

## 12. CONFLICT OF INTEREST

The Contractor is aware of the conflict of interest laws of the City (Hialeah Code ch, 26, Art. I and II), the County (Code of Miami-Dade County, Florida § 2-11.1), and

the State of Florida (Chapter 112, Part III, Florida Statutes) and agrees that it shall fully comply in all respects with the requirements of said laws.

### 13. INDEPENDENT CONTRACTOR

The Contractor, its employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights or benefits generally afforded classified or unclassified employees of the City. The Contractor, its employees, agents or representatives, shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

### 14. INSURANCE

14.1 The Contractor shall provide, pay for and maintain, no later than ten (10) days after this Agreement is presented to the Contractor for signature, such insurance as required by this Section 14, including Workers' Compensation Insurance, Public Liability and Property Damage Insurance, Comprehensive General Liability Insurance, Contractual Liability Insurance, Automobile Liability Insurance and Owner's Protective Liability Insurance, which shall remain in force at all times during the term of this Agreement and any renewal thereof. The Contractor shall furnish, prior to execution of this Agreement by the City, Certificates of Insurance, which indicate that insurance coverage has been obtained for all required insurance policies. The Contractor agrees to secure and pay the premiums for the following policies of insurance with the minimum insurance limits set forth below. Each such policy will be in the name of the Contractor with the City named as an additional insured and shall cover all of the Contractor's operations covered in this Agreement.

14.2 Such policies shall be issued by United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. The company must be rated no less than "A" as to management, and not less than Class "X" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company. Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. The Contractor shall specifically protect the City by naming the City as an additional insured under the Public Liability Insurance Policy, the Contractual Liability Insurance Policy, the Automobile Liability Insurance Policy and the Owner's Protective Liability Insurance Policy.

14.3 The Contractor shall provide coverage for the risks and in the amounts indicated in this paragraph 14.3. All policies shall provide a notice of cancellation or restriction: The policies must be endorsed to provide City with at least 30 days notice of cancellation and/or restriction.

14.3.1 Worker's Compensation Insurance as required by Chapter 440, Florida Statutes, as amended from time to time, and all applicable federal laws to apply for all of Contractor's employees.

14.3.2 Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

14.3.3 Contractual Liability Insurance covering all liability arising out of the terms of this Agreement and all other insurance coverage identified in the Insurance Checklist attached as Exhibit C.

14.3.4 Business Automobile Liability Insurance with \$1,000,000 single limit for bodily injury and property damage combined for each occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (1) Owned vehicles, if applicable; and (2) Hired and Non-Owned vehicles.

14.3.5 Owner's Protective Liability Insurance issued in the name of the City as sole insured in amounts not less than one million dollars (\$1,000,000.00). This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Contractor.

14.3.6 The Contractor shall provide the City with a Certificate of Insurance or a copy of all insurance policies required in this article. The City reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that City shall be given at least 30 days' notice prior to expiration or cancellation of the policy.

14.3.7 Failure to maintain the insurance required above shall be just grounds for termination of this Agreement.

14.4 The Contractor agrees that the insurance coverage required shall include those classifications as are listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor.

## 15. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND AND CASH BOND

15.1 A performance bond and labor and material payment bond is required of the Contractor for the installation of new bus benches as provided by paragraph 3.2. The

Contractor shall duly execute and deliver to the City, each year for the entire initial five (5) year term of this Agreement, a performance bond and a labor and material payment bond in the amount of ten thousand dollars (\$15,000.00). The performance bond and labor and material payment bond shall be delivered to the City Clerk within 15 days after this Agreement is furnished to the Contractor for signature. If the Contractor fails to deliver the performance bond and labor and materials payment bond, the City shall declare the Contractor in default. The performance bond and labor and materials payment bond shall be written through surety insurers authorized to do business in the State of Florida as surety.

15.2 A cash bond in the amount of five percent (5%) of the total of the annual guaranteed minimum fee for the entire initial five (5) year term of this Agreement and any renewal thereof, to secure performance under the terms of this Agreement shall be furnished by the Contractor to the City simultaneously with the submission of this Agreement by the Contractor. The cash bond will be deposited with the Finance Director of the City. The City keeps the interest on the cash bond that accrues during the initial five- year term of this Agreement and any renewal thereof. If the Contractor and the City agree to renew for one or both of the successive five-year terms, the City holds the cash bond and interest thereon during the second five- year term and third five-year term. At the end of the Contract term, whether it is five, ten or fifteen years, the City will return to the Contractor the cash bond but keep all interest accruing thereon only if the City has no claim for damages against the Contractor resulting from Contractor's failure to perform which may be asserted against the cash bond. An attorney trust account check, money order or cashier's check is acceptable for placing the cash bond.

## 16. NONDISCRIMINATION

The Contractor agrees that it shall not discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance of this Agreement. The Contractor shall comply with all federal, state and local laws applicable to Contractor's services, specifically including those covering Equal Opportunity Employment and the Americans with Disabilities Act.

## 17. RECORD RETENTION, INSPECTION AND AUDIT

17.1 The Contractor shall maintain its records in an organized, up-to-date manner, in accordance with generally accepted management principles and practices. The City shall have access to the Contractor's books, logs, records and documents for inspection, audit, review and copying in Miami-Dade County, during normal business hours, within five (5) days after the City requests such records. The Contractor shall provide appropriate facilities for conducting such inspection, audit or review.

17.2 The Florida Public Records Law may be applicable to the Contractor's records or documents pertaining to this Agreement. Contractor agrees to comply with all applicable provisions of the Florida Public Records Law including records retention schedules. Notwithstanding, the Contractor shall maintain and allow access to the books, records,

logs, data, documents, reports and information relating to this Agreement for at least five (5) years after the termination of this Agreement.

## 18. DEFAULT

18.1 Subject to the requirement of notice as provided for in paragraph 18.2 herein, the City may cancel this Agreement upon the occurrence of any of the following events:

18.1.1 Insolvency/Bankruptcy. If during the term of this Agreement:

- a. Contractor files a voluntary petition in bankruptcy; or
- b. Contractor is adjudicated insolvent; or
- c. Contractor obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); or
- d. Contractor files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; or
- e. Contractor seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Contractor, or any of Contractor's property and/or License and/or any and all of the revenues, issues, earnings, profits or income thereof; or
- f. Contractor makes an assignment for the benefit of creditors; or
- g. Contractor fails to pay Contractor's debts generally as they become due; or
- h. Contractor conceals, removes or permits to be concealed or removed, any part of Contractor's property, with intent to hinder, delay or defraud Contractor's creditors or any of them, or makes or suffers a transfer of any of Contractor's property which may constitute an illegal preference or be considered an insider transaction, as defined in the Bankruptcy Code, or which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of Contractor's property through legal proceedings which is not vacated within 30 days from the date thereof; or
- i. A petition is filed in a court of competent jurisdiction against Contractor seeking any determination of bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which petition is not vacated or dismissed

within an aggregate of 90 days (whether or not consecutive) from the date of the filing thereof; or

j. Any trustee, receiver, custodian or liquidator of Contractor, or of any of the property of Contractor and/or of all or any party of this Agreement and/or of any or all of the revenues, issues, earnings, profits or income therefrom, is appointed without the prior written consent of the City, which appointment shall remain unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of the appointment;

18.1.2 Contractor fails to pay any amount owed to the City under this Agreement within 7 days after prompt written notice thereof from the City.

18.1.3 Contractor fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of Contractor to be performed within 30 days after prompt written notice thereof from the City, unless such performance shall reasonably require a longer period, in which case Contractor shall not be deemed in default if Contractor commences the required performance promptly and thereafter pursues and diligently completes such action.

18.2 Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within 30 days, or 7 days if the default concerns Contractor's failure to pay, after receipt of such notice. However, where such default cannot reasonably be cured within such 30-day period, the time for curing such default shall be extended for such period of time as may be necessary under the circumstances if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence. There shall be no extension to the 7-day cure period for Contractor's failure to pay.

18.3 Termination shall be effective upon the date specified in the City's written notice to Contractor and upon said date, this Agreement shall be deemed immediately terminated. Upon such termination, liability of the City under this Agreement to Contractor shall cease and the City may exercise all remedies available to it.

## 19. ENTIRE AGREEMENT

This Agreement and its attachments and exhibits constitute the entire agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

## 20. AMENDMENT

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

## 21. MISCELLANEOUS

21.1 Captions, title and paragraph headings are for convenient reference and are not a part of this Agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

21.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

21.3 Should any provisions, paragraph, sentence, work or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

21.4 Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

21.5 Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

21.6 Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

21.7 Contractor represents that the Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right and authority to enter and perform its obligations under this Agreement, and Contractor is duly authorized to execute and deliver this Agreement without further approvals or authorizations.

THIS SPACE LEFT INTENTIONALLY BLANK. IT IS FOLLOWED BY THE  
SIGNATURE PAGE.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by the respective duly authorized officials, on the day and year first above written.

City of Hialeah, Florida  
501 Palm Avenue  
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of  
City of Hialeah

\_\_\_\_\_  
Marbelys Fatjo, City Clerk

\_\_\_\_\_  
Mayor Carlos Hernandez

(SEAL)

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lorena Bravo, City Attorney

Martin Outdoor Media, Inc., a  
Florida corporation  
150 N.W. 70 Avenue, Suite 3  
Plantation, Florida 33317

Attest:

Authorized signature of the firm:

\_\_\_\_\_  
Corporate Secretary  
Typed/printed name: \_\_\_\_\_

\_\_\_\_\_  
Scott Martin, President

State of Florida  
County of Miami-Dade

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by  
Scott Martin, on behalf of Martin Outdoor Media, Inc., in his/her capacity President.

\_\_\_\_\_  
Personally known or  
\_\_\_\_\_  
Produced valid photo identification

Commission:

\_\_\_\_\_  
Notary Public, State of Florida



**AGREEMENT BETWEEN THE CITY OF HIALEAH  
AND MARTIN OUTDOOR MEDIA, INC.**

This Agreement ("Agreement") entered into this \_\_\_\_ day of May 2015, by and between the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Martin Outdoor Media, Inc., a Florida corporation, ("Contractor,") having a place of business at 150 N.W. 70 Avenue, Suite 3, Plantation, Florida 33317

**RECITALS**

**WHEREAS**, pursuant to a duly advertised Request for Proposal No.: 2005-001, the Contractor submitted a proposal to provide, install and maintain bus passenger benches at city-approved sites within public rights-of-way; and

**WHEREAS**, on November 23, 2004, the City of Hialeah awarded a five-year agreement to Martin Outdoor Media, Inc. with an option to renew for two successive five-year terms subject to the mutual agreement of the parties; and

**WHEREAS**, on November 11, 2009, the City of Hialeah exercised its first option to renew the agreement awarded to Contractor for an additional five years beginning on February 4, 2009 and expiring on February 4, 2015; and

**WHEREAS**, while considering the approval of the second and final five-year extension under the agreement dated January 4, 2005, the parties negotiated new terms set forth in this Agreement;

**WHEREAS**, the Contractor has erected and is maintaining 389 bus passenger benches at the locations identified in Exhibit A to this Agreement;

**WHEREAS**, the parties agree this Agreement shall govern their rights and obligations as of the date of the parties' execution and this Agreement shall supersede all prior agreements, specifically the agreement awarded on November 23, 2004 and renewed on November 11, 2009;

**WHEREAS**, the City agrees to enter into this Agreement with the Contractor and the Contractor agrees to perform services under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations herein contained and intending to be legally bound thereby, and subject to the terms and conditions hereinafter stated, the City and the Contractor enter into this License Agreement and agree as follows:

## 1. INCORPORATION OF RECITALS

The parties represent that the recitals set forth above are true and correct. The recitals are incorporated by reference in their entirety and are deemed a part of this Agreement.

## 2. TERM AND OPTIONS TO RENEW

2.1. The term of this Agreement shall begin on June 1, 2015 and end on May 31, 2020 unless otherwise terminated or renewed as set forth in this Agreement.

2.2 Provided that Contractor has not defaulted in the performance of its obligations pursuant to this Agreement, that Contractor has the capability in all respects to fully perform under this Agreement, that Contractor has the integrity and reliability that will ensure good faith performance, and that the parties mutually agree, this Agreement may be renewed for two additional five-year terms. The Contractor shall notify the City in writing within 120 days of the expiration of the initial five-year term or within 120 days of the expiration of the first renewal period, if applicable, of its intention to renew for a successive five-year term.

## 3. SCOPE OF SERVICES

3.1 Subject to all the terms and conditions contained in this Agreement, and compliance with all applicable federal, state, county and local law, the City hereby grants Contractor permission to erect, install, replace, maintain and repair bus passenger benches with advertising during the term of this Agreement at the locations identified on Exhibit A to this Agreement. The total number of existing bus passenger benches is 389 and no additional benches shall be installed in the City's right-of-way unless otherwise approved in writing in advance of installation.

3.2 At Contractor's sole cost and expense, the Contractor shall upgrade and replace 125 of the existing bus passenger benches, at the locations of the City's choice and in the City's sole discretion, with new benches of the design and style approved by the City as illustrated in Exhibit B to this Agreement. The upgrade and replacement of these benches shall take place during the first five year term of this Agreement at the uniform rate of 25 benches replaced each year.

3.3 Any change in location, removal, replacement, upgrade or addition of benches must be approved by the City in advance of any such action by the Contractor. The Contractor shall cooperate with the City to install and maintain benches along designated stops on official bus routes or any other stop which the City determines, in its sole discretion, serves the convenience and comfort of the public.

3.4 The Contractor shall install, replace, maintain and repair all benches in compliance with all applicable federal, state and local laws, including but not limited to, applicable safety, accessibility and building standards and regulations. The Contractor shall not create any unsafe conditions on the rights of way as a result of any installation,

replacement, maintenance, repair or any other work or action required under this Agreement. The Contractor shall be responsible for keeping and maintaining all affected areas reasonably clean, safe and in good workmanlike manner, as appropriate for the stage of completion of any installation, replacement, maintenance or repair of benches. The Contractor shall be responsible for repairing any damage caused to the public right of way as a result of the installation, replacement, maintenance or repair of any bench. The Contractor shall inspect benches regularly to ensure that all benches are kept and maintained in good order and repair, and in a clean, safe and sanitary condition and appearance at all times.

3.5 The Contractor shall pay for all costs and expenses associated with the installation, inspection, maintenance, repair, removal, or replacement of all bus benches and the surrounding public rights-of-way as required by this Agreement, including but not limited to, labor, equipment and materials, license and permit fees, and any regulatory or government assessments, fees, charges, or taxes. The Contractor warrants that all work, materials, services and equipment that may be reasonably inferred from this Agreement as being required to produce the intended result will be supplied by the Contractor at its own cost, whether or not specifically identified and required in this Agreement. The Contractor warrants and agrees that all work, materials, services and equipment necessitated by the inspections of City agencies or other regulatory agencies, in order to bring Contractor's work into compliance with this Agreement and all applicable laws, shall be the responsibility of the Contractor and shall be provided at no additional cost to the City.

3.6 All the bus passenger benches governed by this Agreement are the property of the Contractor and shall be removed by the Contractor within thirty (30) days after termination of this Agreement including any renewal thereof. The Contractor shall be responsible for repairing and restoring the public rights-of-way, including sidewalks, walkways, and curbs, to a safe and working condition upon removal of the bus passenger benches, at its sole cost and expense. If the Contractor fails to remove any bench, or restore or repair any portion of the public right-of-way, as required by this Agreement, the City shall have the right to remove all benches, and restore or repair the public right-of-way, as it deems necessary, and the Contractor shall be responsible for and shall reimburse the City for all costs and expenses incurred by the City for its failure to remove benches, or restore or repair the public right-of-way upon termination of the Agreement.

3.7 Nothing contained in this Agreement shall be construed as creating an ownership interest or exclusive easement in the Contractor on any portion of the public right-of-way or other public property on which the bus passenger benches are located.

3.8 The Contractor will provide, at its sole cost and expense, a toll free phone number clearly indicated on each bench to receive public complaints about or requests for maintenance or repair services to the bus passenger benches. The Contractor shall perform all reasonably necessary action required to correct and make safe the conditions reported through the toll free phone number within twenty-four (24) hours after notice. The number shall be operational seven (7) days a week, twenty-four (24) hours a day.

3.9 The Contractor shall be responsible for maintaining and cleaning the portion of the public right-of-way within ten feet from each side of each bus passenger bench, at its sole cost and expense. The Contractor shall not allow this area to be overgrown with grass or weeds or littered with garbage or debris. Nothing in this paragraph 3.9 shall be construed as requiring the Contractor to maintain or clean the roadway surface free from litter, garbage or debris.

3.10 If a bus bench or the surrounding public right-of-way is not maintained in the manner required by this Agreement, as determined by the City, the City shall notify the Contractor in writing. The Contractor shall correct the condition complained of by the City within twenty-four (24) hours after receipt of the City's notification. If the Contractor fails to take the necessary corrective action after notification from the City, the City may take all action it deems necessary to correct the condition complained of and the Contractor shall be responsible for the City's costs and expenses incurred, including, but not limited to, labor, overtime, materials, department overhead, equipment charges and any other reasonable fees or costs incurred by the City for this purpose.

3.11 The Contractor shall create, maintain, and make available to the City all of records reasonably necessary with enough specificity and detail to demonstrate that the Contractor has performed its obligations in compliance with the requirements of this Agreement, including but not limited to: (i) a log of all complaints or requests for maintenance, repair or service to the bus benches or the surrounding right-of-way pursuant to this Agreement identifying the person making the complaint or request, the date and time of the complaint or request, the nature of the complaint or request, the action or actions taken by the Contractor to address the complaint or request and the date and time of all action taken by the Contractor until the complaint or request was satisfactorily addressed; and (ii) a log of all inspections, maintenance and repairs to the bus benches and to the surrounding right-of-way, including information describing the action or actions taken by the Contractor, the date and time of each action, the reason or reasons the action or actions were deemed necessary by the Contractor, and any observations about the conditions of the benches or surrounding public right-of-way that required the Contractor's action.

3.12 The City shall have the right to request removal or relocation of any bus bench, which in its opinion obstructs pedestrian or vehicular traffic, creates a risk of danger to the health, safety or welfare of the public, or is otherwise unsafe, unsanitary or a nuisance, if the bus stop served by the bus bench has been eliminated or the bench no longer serves to meet the comfort of convenience of the public. Elimination of benches pursuant to this paragraph 3.12, shall not entitle the Contractor to setoff, deduct, or otherwise reduce the compensation owed to the City pursuant to Section 4 of this Agreement.

3.13 The Contractor shall have the right to sell advertising on all bus passenger benches during the term of this Agreement, and any renewal thereof. All revenue derived from the sale of advertisement by the Contractor shall belong exclusively to the

Contractor except as provided for in Section 4 of this Agreement. The City shall not be liable to Contractor for any monies or compensation for the use of the benches at any location within the City. The sole source of compensation to be derived by Contractor is that which may be gained from the advertisement sold and displayed on the benches by Contractor. The Contractor shall indemnify and hold the City harmless from any claim made against the Contractor or the City by any person, corporation or entity related to Contractor's sale of advertisement on the benches, including but not limited to any claim of infringement of intellectual property rights. The City shall have the right to require the Contractor to remove any advertising display or content that the City, in its sole discretion, determines to be offensive, obscene or lascivious, that distracts or disrupts traffic. The Contractor agrees to provide, at no cost to the City, the entire advertising space on no less than 30 benches each year the Agreement is in effect to display messages of public interest, as determined by the City, at the locations of the City's choice. With the exception of the first year of this initial term in this Agreement, the number of benches and locations shall be selected by the City and provided to the Contractor with ninety (90) days advance notice prior to the beginning of each year. The number of benches for the purpose of dedicated advertising space to the City shall be 14 during the first year of this first term of the Agreement (i.e. 2015). The Contractor shall install all City sponsored advertising on the benches at no cost to the City. The number of benches used by the City pursuant to this paragraph 3.13 shall not be included in the yearly calculation of the annual minimum guaranteed fee according to section 4 of this Agreement. The Contractor shall have no right to setoff, deduct, or otherwise reduce the compensation owed to the City or make any claim on any revenue resulting from the City's use of the advertising space pursuant to this paragraph 3.13.

3.14 Contractor understands and agrees that the City has a separate agreement currently in effect with Clear Channel Outdoor, Inc., for the installation and maintenance of bus shelters on the City's rights-of-way pursuant to Hialeah, Fla. Resolution No. 2002-15 (March 31, 2002) and Hialeah, Fla. Ordinance 2002-27 (April 26, 2002) entered into between the parties on May 13, 2002. Contractor acknowledges receipt of a copy of the current agreement. Contractor agrees that the Parties' rights and obligations as provided for in this Agreement shall not impair the rights and obligations of the City or Clear Channel Outdoor, Inc. pursuant to their agreement. The City reserves the exclusive right of identifying locations it deems suitable, in its own discretion, for the installation and maintenance of a bus bench pursuant to the terms of this Agreement. Likewise, the City reserves the exclusive right, in its sole discretion, of eliminating existing bus benches under this Agreement.

#### 4. LICENSING FEE AND COMPENSATION

4.1 The Contractor shall pay an annual guaranteed minimum fee or a percentage of yearly gross advertising revenue, whichever amount is greater, for each year the Agreement is in effect, including any renewals thereof, as follows:

<u>Year</u>	<u>Annual Guaranteed Minimum Fee</u>	<u>Percentage of Yearly Gross Revenue</u>
-------------	--	---

1	\$56,250.00	12%
2	\$58,500.00	12%
3	\$60,750.00	12%
4	\$63,000.00	12%
5	\$65,250.00	12%
6	\$67,500.00	15%
7	\$69,750.00	15%
8	\$72,000.00	15%
9	\$74,250.00	15%
10	\$76,500.00	15%
11	\$78,750.00	20%
12	\$81,000.00	20%
13	\$81,000.00	20%
14	\$81,000.00	20%
15	\$81,000.00	20%

4.1.1 The annual guaranteed minimum fee indicated in paragraph 4.1 above was calculated based on the negotiated monthly fee for each bench, up to 375 benches, for each year the Agreement is in effect, as indicated in the table below. Any additional benches installed by Contractor on the City's right-of-way, as approved in advance by the City, in excess of 375, shall increase the annual guaranteed minimum fee indicated in paragraph 4.1 above by an amount equal to the number of benches in excess of 375 times the negotiated monthly fee for each such additional bench in excess of 375, for each year, as indicated in the table below. To illustrate the calculation required by this paragraph 4.1.1, assume in Year 2 the City elects not to use any benches to display its public interest advertisements as allowed by section 3.13 above, the number of benches in excess of 375 would be 14. The annual guaranteed minimum fee indicated in paragraph 4.1 above for Year 2 (\$58,500.00) would increase by \$2,268.00 ([14 excess benches X \$13.50] X 12) for a total guaranteed minimum fee of \$60,768.00 in Year 2.

<u>Year</u>	<u>Monthly Fee for each bench up to 375</u>	<u>Monthly Fee for each additional bench in excess of 375</u>
1	\$12.50	\$13.00
2	\$13.00	\$13.50
3	\$13.50	\$14.00
4	\$14.00	\$14.50
5	\$14.50	\$15.00
6	\$15.00	\$15.50
7	\$15.50	\$16.00
8	\$16.00	\$16.50
9	\$16.50	\$17.00
10	\$17.00	\$17.50
11	\$17.50	\$18.00
12	\$18.00	\$18.50
13	\$18.00	\$18.50

14	\$18.00	\$18.50
15	\$18.00	\$18.50

4.2 The total annual guaranteed minimum fee indicated in paragraph 4.1 above, as that amount may be increased to account for benches in excess of 375 at set forth in paragraph 4.1.1 above, shall be paid in advance in equal installments on a quarterly basis throughout each year the Agreement is in effect. Within thirty (30) days after the end of each year of the Agreement, the Contractor shall calculate the total gross revenue generated for the preceding year for all bus benches in the City and apply the yearly gross revenue percentage for that corresponding year as set forth in paragraph 4.1. If the percentage of total yearly gross revenue exceeds the annual guaranteed minimum fee paid during the year, the Contractor shall pay the excess between these two amounts to the City as an additional payment. This additional payment shall be made within forty-five (45) days after the end of each year of the Agreement or within fifteen (15) days from the calculation of the percentage of total yearly gross revenue amount, whichever date is earlier. For example, assuming the total number of benches does not exceed 375, for Year 1 of the Agreement, the Contractor shall pay \$14,062.50 (one quarter of \$56,250.00) on June 1, 2015, September 1, 2015, December 1, 2015 and March 1, 2016. No later than June 30, 2016, Contractor shall calculate the total gross revenue generated for all bus benches during the period of June 1, 2015 to May 31, 2016 and multiply the total gross revenue by 10%. If this amount exceeds \$56,250.00, the Contractor shall pay the excess as additional payment to the City. For purposes of illustrating the calculations required to determine compensation according to this section 4, assuming the total number of benches does not exceed 375 and the total yearly gross revenue for Year 7 (June 1, 2022 to May 31, 2023) is \$500,000.00, the Contractor would pay \$5,250.00 ( $[\$500,000.00 \times 15\% = \$75,000.00] - \$69,750.00$ ) as additional payment to the City no later than July 15, 2023. Assuming the total number of benches does not exceed 375 and the total yearly gross revenue remains the same for Year 10 (June 1, 2025 to May 31, 2026), the Contractor would not be required to make an additional payment to the City because the annual guaranteed minimum fee for Year 10 (\$76,500.00) would not exceed fifteen percent (15%) of total yearly gross revenue for Year 10 (\$75,000.00). For purposes of illustrating the calculations required to determine compensation if the number of benches exceeds 375, assume in Year 7 the City decides not to use any dedicated advertising space on any bench leaving the existing 389 benches for the Contractor's use and assume the total yearly gross revenue for Year 7 is \$500,000.00, the Contractor would pay a total annual guaranteed minimum fee of \$72,438.00 (\$69,750.00 plus \$2,688.00 for 14 excess benches) in equal quarterly installments of \$18,109.50 and \$2,562.00 as an additional payment to the City as the percentage of total yearly gross revenue.

## 5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City.

## 6. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by certified mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

### CITY

City Clerk  
City of Hialeah  
501 Palm Avenue, 3rd Floor  
Hialeah, Florida 33010-0040  
Telephone: (305) 883-5824  
Facsimile: (305) 883-5814

### MARTIN OUTDOOR MEDIA, INC.

Scott Martin  
Business Development  
Martin Outdoor Media, Inc.  
150 N.W. 70 Avenue, Ste. 3  
Plantation, Florida 33317  
Telephone: (954)-583-2066  
Facsimile: (954)-583-2068  
E-mail: Scott@gobernchess.com

With a Copy to:

City Attorney  
City of Hialeah  
501 Palm Avenue, 4<sup>th</sup> Floor  
Hialeah, Florida 33010-0040  
Telephone: (305) 883-5854  
Facsimile: (305) 883-5896

## 7. NONDELEGABLE

The duties and obligations undertaken by the Contractor pursuant to this Agreement shall not be delegated or assigned to any person or firm. Any sale, transfer, assignment or other disposition of any duties and obligations undertaken hereunder, exclusive of installation and removal, shall be approved by the Hialeah City Council and the Mayor, by resolution, prior to continuation of any duties and obligations provided under this Agreement. The City shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment of the Contractor. Any assignment made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement.

## 8. AWARD OF AGREEMENT

The Contractor warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage,



brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

## 9. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

## 10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

## 11. INDEMNIFICATION

11.1 The Contractor, for itself, and its officers, directors, employees, subcontractors, agents, representatives, successors, assigns, and any other individual or entity who may attempt to sue or be sued on its behalf, hereby unequivocally waives, releases, holds harmless, indemnifies, covenants not to sue, agrees to defend, and forever discharges the City of Hialeah, its officers, elected or appointed, directors, employees, agents, attorneys, contractors and all other persons, entities, organizations and corporations affiliated therewith (all of whom constitute the "Released Parties") from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and from any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind (collectively "Claims"), arising out of, resulting from, relating to, is incidental to or is in any way connected to the Contractor's performance of this Agreement, including by way of illustration and not limitation, (i) any negligent installation, replacement, removal, maintenance or repair of any bus bench governed by this Agreement; or (ii) any negligent inspection, failure to warn, or failure to make safe any dangerous condition on any bench or surrounding public right-of-way, as required by this Agreement; or (iii) any failure of Contractor to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, whether or not such Claims, as collectively defined in this section 11, were caused by, arose or resulted from the negligent acts or omissions of the Released Parties. This indemnification shall survive the termination of this Agreement.

## 12. CONFLICT OF INTEREST

The Contractor is aware of the conflict of interest laws of the City (Hialeah Code ch. 26, Art. I and II), the County (Code of Miami-Dade County, Florida § 2-11.1), and

the State of Florida (Chapter 112, Part III, Florida Statutes) and agrees that it shall fully comply in all respects with the requirements of said laws.

### 13. INDEPENDENT CONTRACTOR

The Contractor, its employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights or benefits generally afforded classified or unclassified employees of the City. The Contractor, its employees, agents or representatives, shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

### 14. INSURANCE

14.1 The Contractor shall provide, pay for and maintain, no later than ten (10) days after this Agreement is presented to the Contractor for signature, such insurance as required by this Section 14, including Workers' Compensation Insurance, Public Liability and Property Damage Insurance, Comprehensive General Liability Insurance, Contractual Liability Insurance, Automobile Liability Insurance and Owner's Protective Liability Insurance, which shall remain in force at all times during the term of this Agreement and any renewal thereof. The Contractor shall furnish, prior to execution of this Agreement by the City, Certificates of Insurance, which indicate that insurance coverage has been obtained for all required insurance policies. The Contractor agrees to secure and pay the premiums for the following policies of insurance with the minimum insurance limits set forth below. Each such policy will be in the name of the Contractor with the City named as an additional insured and shall cover all of the Contractor's operations covered in this Agreement.

14.2 Such policies shall be issued by United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. The company must be rated no less than "A" as to management, and not less than Class "X" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company. Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. The Contractor shall specifically protect the City by naming the City as an additional insured under the Public Liability Insurance Policy, the Contractual Liability Insurance Policy, the Automobile Liability Insurance Policy and the Owner's Protective Liability Insurance Policy.

14.3 The Contractor shall provide coverage for the risks and in the amounts indicated in this paragraph 14.3. All policies shall provide a notice of cancellation or restriction: The policies must be endorsed to provide City with at least 30 days notice of cancellation and/or restriction.

14.3.1 Worker's Compensation Insurance as required by Chapter 440, Florida Statutes, as amended from time to time, and all applicable federal laws to apply for all of Contractor's employees.

14.3.2 Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

14.3.3 Contractual Liability Insurance covering all liability arising out of the terms of this Agreement and all other insurance coverage identified in the Insurance Checklist attached as Exhibit C.

14.3.4 Business Automobile Liability Insurance with \$1,000,000 single limit for bodily injury and property damage combined for each occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (1) Owned vehicles, if applicable; and (2) Hired and Non-Owned vehicles.

14.3.5 Owner's Protective Liability Insurance issued in the name of the City as sole insured in amounts not less than one million dollars (\$1,000,000.00). This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Contractor.

14.3.6 The Contractor shall provide the City with a Certificate of Insurance or a copy of all insurance policies required in this article. The City reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that City shall be given at least 30 days' notice prior to expiration or cancellation of the policy.

14.3.7 Failure to maintain the insurance required above shall be just grounds for termination of this Agreement.

14.4 The Contractor agrees that the insurance coverage required shall include those classifications as are listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor.

## 15. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND AND CASH BOND

15.1 A performance bond and labor and material payment bond is required of the Contractor for the installation of new bus benches as provided by paragraph 3.2. The

Contractor shall duly execute and deliver to the City, each year for the entire initial five (5) year term of this Agreement, a performance bond and a labor and material payment bond in the amount of ten thousand dollars (\$15,000.00). The performance bond and labor and material payment bond shall be delivered to the City Clerk within 15 days after this Agreement is furnished to the Contractor for signature. If the Contractor fails to deliver the performance bond and labor and materials payment bond, the City shall declare the Contractor in default. The performance bond and labor and materials payment bond shall be written through surety insurers authorized to do business in the State of Florida as surety.

15.2 A cash bond in the amount of five percent (5%) of the total of the annual guaranteed minimum fee for the entire initial five (5) year term of this Agreement and any renewal thereof, to secure performance under the terms of this Agreement shall be furnished by the Contractor to the City simultaneously with the submission of this Agreement by the Contractor. The cash bond will be deposited with the Finance Director of the City. The City keeps the interest on the cash bond that accrues during the initial five- year term of this Agreement and any renewal thereof. If the Contractor and the City agree to renew for one or both of the successive five-year terms, the City holds the cash bond and interest thereon during the second five- year term and third five-year term. At the end of the Contract term, whether it is five, ten or fifteen years, the City will return to the Contractor the cash bond but keep all interest accruing thereon only if the City has no claim for damages against the Contractor resulting from Contractor's failure to perform which may be asserted against the cash bond. An attorney trust account check, money order or cashier's check is acceptable for placing the cash bond.

## 16. NONDISCRIMINATION

The Contractor agrees that it shall not discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance of this Agreement. The Contractor shall comply will all federal, state and local laws applicable to Contractor's services, specifically including those covering Equal Opportunity Employment and the Americans with Disabilities Act.

## 17. RECORD RETENTION, INSPECTION AND AUDIT

17.1 The Contractor shall maintain its records in an organized, up-to-date manner, in accordance with generally accepted management principles and practices. The City shall have access to the Contractor's books, logs, records and documents for inspection, audit, review and copying in Miami-Dade County, during normal business hours, within five (5) days after the City requests such records. The Contractor shall provide appropriate facilities for conducting such inspection, audit or review.

17.2 The Florida Public Records Law may be applicable to the Contractor's records or documents pertaining to this Agreement. Contractor agrees to comply with all applicable provisions of the Florida Public Records Law including records retention schedules. Notwithstanding, the Contractor shall maintain and allow access to the books, records,

logs, data, documents, reports and information relating to this Agreement for at least five (5) years after the termination of this Agreement.

## 18. DEFAULT

18.1 Subject to the requirement of notice as provided for in paragraph 18.2 herein, the City may cancel this Agreement upon the occurrence of any of the following events:

18.1.1 Insolvency/Bankruptcy. If during the term of this Agreement:

- a. Contractor files a voluntary petition in bankruptcy; or
- b. Contractor is adjudicated insolvent; or
- c. Contractor obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); or
- d. Contractor files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; or
- e. Contractor seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Contractor, or any of Contractor's property and/or License and/or any and all of the revenues, issues, earnings, profits or income thereof; or
- f. Contractor makes an assignment for the benefit of creditors; or
- g. Contractor fails to pay Contractor's debts generally as they become due; or
- h. Contractor conceals, removes or permits to be concealed or removed, any part of Contractor's property, with intent to hinder, delay or defraud Contractor's creditors or any of them, or makes or suffers a transfer of any of Contractor's property which may constitute an illegal preference or be considered an insider transaction, as defined in the Bankruptcy Code, or which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of Contractor's property through legal proceedings which is not vacated within 30 days from the date thereof; or
- i. A petition is filed in a court of competent jurisdiction against Contractor seeking any determination of bankruptcy, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which petition is not vacated or dismissed

within an aggregate of 90 days (whether or not consecutive) from the date of the filing thereof; or

j. Any trustee, receiver, custodian or liquidator of Contractor, or of any of the property of Contractor and/or of all or any party of this Agreement and/or of any or all of the revenues, issues, earnings, profits or income therefrom, is appointed without the prior written consent of the City, which appointment shall remain unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of the appointment;

18.1.2 Contractor fails to pay any amount owed to the City under this Agreement within 7 days after prompt written notice thereof from the City.

18.1.3 Contractor fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of Contractor to be performed within 30 days after prompt written notice thereof from the City, unless such performance shall reasonably require a longer period, in which case Contractor shall not be deemed in default if Contractor commences the required performance promptly and thereafter pursues and diligently completes such action.

18.2 Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within 30 days, or 7 days if the default concerns Contractor's failure to pay, after receipt of such notice. However, where such default cannot reasonably be cured within such 30-day period, the time for curing such default shall be extended for such period of time as may be necessary under the circumstances if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence. There shall be no extension to the 7-day cure period for Contractor's failure to pay.

18.3 Termination shall be effective upon the date specified in the City's written notice to Contractor and upon said date, this Agreement shall be deemed immediately terminated. Upon such termination, liability of the City under this Agreement to Contractor shall cease and the City may exercise all remedies available to it.

## 19. ENTIRE AGREEMENT

This Agreement and its attachments and exhibits constitute the entire agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

## 20. AMENDMENT

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

## 21. MISCELLANEOUS

21.1 Captions, title and paragraph headings are for convenient reference and are not a part of this Agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

21.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

21.3 Should any provisions, paragraph, sentence, work or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

21.4 Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

21.5 Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

21.6 Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

21.7 Contractor represents that the Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right and authority to enter and perform its obligations under this Agreement, and Contractor is duly authorized to execute and deliver this Agreement without further approvals or authorizations.

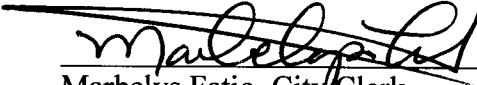
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SIGNATURE PAGE.

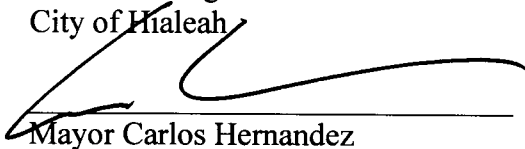
IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by the respective duly authorized officials, on the day and year first above written.

City of Hialeah, Florida  
501 Palm Avenue  
Hialeah, Florida 33010-0040

Attest:

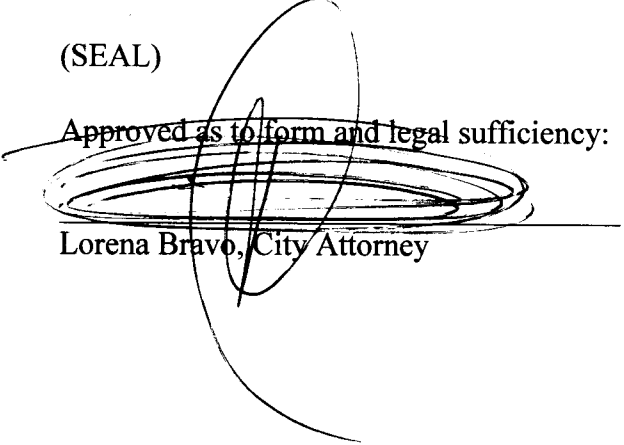
Authorized signature on behalf of  
City of Hialeah

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

(SEAL)

Approved as to form and legal sufficiency:

  
Lorena Bravo, City Attorney

Martin Outdoor Media, Inc., a  
Florida corporation  
150 N.W. 70 Avenue, Suite 3  
Plantation, Florida 33317

Attest:

Authorized signature of the firm:

  
Corporate Secretary

  
Scott Martin, President

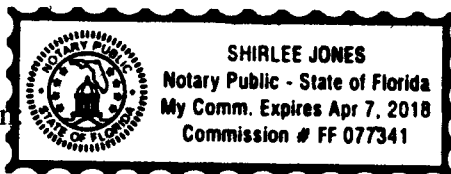
Typed/printed name: Shirlee Jones

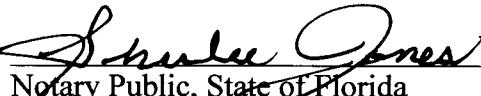
State of Florida  
County of Miami-Dade

Sworn to and subscribed before me on this 17 day of June, 2015, by  
Scott Martin, on behalf of Martin Outdoor Media, Inc., in his/her capacity President.

☒ Personally known or  
☐ Produced valid photo identification

Commission



  
Notary Public, State of Florida